

FILED
By: _____
AUG 29 2014
Board of Disciplinary Appeals
appointed by the
Supreme Court of Texas

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

IN THE MATTER OF §
JOHN WILLIAM TINDER, II § CAUSE NO. 54878
STATE BAR CARD NO. 24003060 §

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline, brings this action against Respondent, John William Tinder, II, (hereinafter called "Respondent"), showing as follows:

1. Pursuant to Rules 190.1 and 190.3, Texas Rules of Civil Procedure (TRCP), Petitioner intends discovery in this case to be conducted under the Level II Discovery Control Plan.

2. 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.

3. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at 11971 Quay St., Broomfield, Colorado 80020.

4. On or about April 9, 2014, a Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct (Exhibit 1) was filed with the Presiding Disciplinary Judge, Supreme Court of Colorado, in a matter styled: *Complainant: The People of the State of Colorado, Respondent: John William Tinder, #39915*, in Case No. 14 PDJ 032. In

the Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct, the Court found that "Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 8.4(c)."

5. On or about April 10, 2014, an Order Approving Conditional Admission of Misconduct and Imposing Sanctions Pursuant to C.R.C.P. 251.22 (Exhibit 2) was entered in the Supreme Court, State of Colorado, before the Office of the Presiding Disciplinary Judge in a matter styled: *Complainant: The People of the State of Colorado, Respondent: John William Tinder*, in Case No. 14PDJ032, that states in pertinent part as follows:

...1. The stipulation is accepted and approved. 2. JOHN WILLIAM TINDER, Attorney Registration Number 39915, is SUSPENDED from the practice of law for a period of SIX MONTHS, ALL STAYED upon the successful completion of a TWO-YEAR period of PROBATION, subject to the conditions set forth in paragraph 18 of the stipulation.....

Certified copies of the Stipulation, Agreement and Affidavit Containing the Respondent's Conditional Admission of Misconduct and Order Approving Conditional Admission of Misconduct and Imposing Sanctions Pursuant to C.R.C.P. 251.22 are attached hereto as Petitioner's Exhibits 1 and 2, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 and 2 at the time of the hearing in this case.

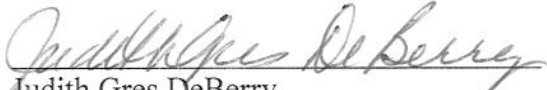
6. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why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

Colorado and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Linda A. Acevedo
Chief Disciplinary Counsel

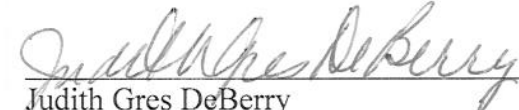
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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

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

John William Tinder, II
11971 Quay St.
Broomfield, Colorado 80020


Judith Gres DeBerry

**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

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**SUPREME COURT OF TEXAS
BOARD OF DISCIPLINARY APPEALS
INTERNAL PROCEDURAL RULES**

SECTION 1: 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 chairperson.
- (c) “Classification” is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE (“TRDP”) 2.10 by the Chief Disciplinary Counsel (“CDC”) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “Clerk” is the executive director or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “Executive Director” is the executive director of BODA.
- (f) “Panel” is any three-member grouping of BODA.
- (g) “Party” is a complainant, respondent, or the CDC.

Rule 1.02 General Powers

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE (“TRCP”), TEXAS RULES OF APPELLATE PROCEDURE (“TRAP”), and TEXAS RULES OF EVIDENCE (“TRE”) apply to all disciplinary matters before BODA, except appeals from classification decisions, which are governed by Section 3 of these Internal Rules.

Rule 1.04 Appointment of Panels

- (a) BODA may consider any matter or motion through appointment of a panel, except as specified in subpart (b) of this Rule. The chair may delegate appointment of panels for any BODA action to the executive director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing

contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as respondent shall be considered by BODA sitting *en banc*.

Rule 1.05 Record Retention

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

Rule 1.06 Trial Briefs

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

Rule 1.07 Service

In any disciplinary proceeding before BODA initiated by service of a petition upon the respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to respondent as addressee only, or in any other manner permitted by applicable rule(s) and authorized by BODA that is 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. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the respondent's signature.

Rule 1.08 Publication

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and notify each respondent in a compulsory discipline, reciprocal discipline, revocation of probation, or disability matter filed with BODA where these rules are available.

Rule 1.09 Photocopying Costs

The clerk of BODA may charge to the requestor a reasonable amount for the reproduction of non-confidential documents filed with BODA. BODA may set a fee for the reproduction of documents. The fee shall include compensation for staff and recovery of actual production costs.

Rule 1.10 Abstracts

BODA may, in its sole discretion, periodically prepare abstracts of inquiries, grievances, or disciplinary proceedings for publication pursuant to Texas Gov't Code § 81.072(b)(3) and Part VI of the TRDP.

Rule 1.11 Hearing Setting and Notice

(a) **Original Petitions.** For any compulsory case, reciprocal case, revocation of probation, or other matter initiated by the CDC filing a petition with BODA, the CDC may contact the BODA clerk for the next regular available hearing date before filing the original petition. The CDC may then include in the petition a hearing notice specifying the date, time, and place of the hearing. The hearing date must be at least thirty (30) days from the date that the petition is served on the respondent, except in the case of a petition to revoke probation.

(b) **Filing without notice.** The CDC may file any matter with BODA without first obtaining a hearing date so long as it thereafter serves notice on the respondent of the date, time, and place of the hearing in accordance with TRCP 21a (or other applicable TRCP) at least thirty (30) days before the hearing date, except in the case of a petition to revoke probation.

(c) **Expedited settings.** If a party desires a hearing on a matter on a date other than the next regular available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. The expedited hearing setting must be at least thirty (30) days from the date of service of the petition, motion or other pleading, except in the case of a petition to revoke probation. BODA may grant or deny a request for an expedited hearing date in its sole discretion.

(d) **Setting notices.** BODA shall notify the parties by first class mail of any hearing date, other than a hearing set on the next regularly available hearing date as noticed in an original petition or motion.

(e) **Announcement docket.** Attorneys and parties appearing before BODA shall check in with the BODA clerk in the courtroom immediately prior to the time docket call is scheduled to begin. The chair will call an announcement docket immediately following the call to order of BODA hearings. Attorneys for each party with a matter on the docket shall appear at that time to give their announcement of readiness, a time estimate for the hearing, and any preliminary motions or matters. The chair will set and announce the order of cases to be heard following the docket announcements.

Rule 1.12 Time to Answer

An answer to any matter pending before BODA may be filed at any time prior to the day of the hearing on the merits 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 1.13 Facsimile and Electronic Filing

(a) Any document required to be filed with BODA may be filed by facsimile transmission with a copy to the BODA clerk by first class mail. A document filed by facsimile will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by facsimile after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day.

(b) Any document required to be filed with BODA may be filed by emailing a copy of the document file to the email address designated by BODA for that purpose with a copy sent to the BODA clerk by first class mail. A document filed by email will be considered filed the day it is received if received before 5:00 p.m. on a regular business day. Any document received by email after 5:00 p.m. or received on a weekend or holiday officially observed by the State of Texas will be considered filed the next regular business day. The date and time of receipt shall be determined by the date and time shown on the BODA clerk's email.

(c) It is the responsibility of the party filing a document by facsimile or email to obtain the correct telephone number or email address for BODA and confirm that the document was received by BODA in legible form. Any document which is illegible or which cannot be opened as part of an email attachment by BODA will not be considered received or filed. Parties using facsimile or email filing must still comply with TRCP requirements for signatures.

(d) Papers will not be deemed filed if sent to any individual BODA member or other office or address.

Rule 1.14 Hearing Exhibits

Counsel should provide an original and twelve copies of any document, pleading, exhibit, or other material which the attorney intends to offer or otherwise make available to the BODA members at a hearing and not already filed with BODA prior to the hearing.

Rule 1.15 BODA Work Product and Drafts

Without limiting any exceptions or exemptions from disclosure contained in any other rules or statutes, a document or record of any nature, regardless of electronic or physical form, characteristics, or means of transmission, 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, by BODA staff or interns, or any other person acting on behalf of or at the direction of BODA.

Rule 1.16 BODA Opinions

(a) BODA may render judgment with or without written opinion in any disciplinary matter. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and shall 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 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.

SECTION 2: ETHICAL CONSIDERATIONS

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

(a) No current member of BODA shall represent a party with respect to any disciplinary action or proceeding. No current member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a party in any disciplinary action or proceeding.

(b) No current BODA member may serve as an expert witness providing opinions regarding 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) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose matters discussed in conference concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any disciplinary proceeding, including depositions, a member of BODA shall promptly notify the chair of BODA and the CDC.

Rule 2.03 Disqualification and Recusal of BODA Members

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

(b) BODA members may, in addition to recusals pursuant to (a) above, voluntarily recuse themselves from any discussion and voting for any other reason.

(c) Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party in any disciplinary proceeding or before BODA.

Rule 2.04 Communications with BODA

Correspondence or other communications relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01 Notice of Appeal

(a) If the grievance filed by the complainant is not classified as a complaint, the CDC shall notify the complainant of his or her rights to appeal as set out in TRDP 2.10 or other applicable rule.

(b) To facilitate the potential filing of an appeal, the CDC shall send the complainant an Appeal Notice form with the classification disposition which shall include, but is not limited to, the docket number of the matter, the time deadline for appealing as set out in TRDP 2.10 or other applicable provision, and information for mailing or faxing the Appeal Notice to BODA.

Rule 3.02 Complaint on Appeal

BODA shall review only the original grievance on appeals from classification decisions. The CDC shall forward a copy of the complete grievance to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental information which was not reviewed as part of the original screening and classification decision.

Rule 3.03 Notice of Disposition

BODA shall mail complainant, respondent, and the CDC written notice of the decision of the appeal by first class mail to the addresses provided BODA by the CDC in the appeal transmittal.

SECTION 4: APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01 Signing, Filing, and Service

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, email address, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Number of Copies.** Each party shall file an original and two (2) copies of all briefs and motions with the clerk. Only one copy of the clerk's record and reporter's record shall be filed.

(c) **Service.** Copies of all papers other than the record filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 4.02 Computation of Time

(a) **Beginnings of Periods.** The date the chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.21.

(b) **TRAP Followed.** Computation of time for purposes of this section shall follow TRAP 4.1 and 9.2(b).

Rule 4.03 Record on Appeal

(a) **Contents.** The record on appeal shall consist of a clerk's record and where necessary to the appeal, a reporter's record.

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

(c) **Responsibility for Filing Record.** The custodian of records of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record if a notice of appeal has been filed. The court reporter is responsible for timely filing the reporter's record if a notice of appeal has been filed, the appellant has requested that the reporter's record be prepared, and the party responsible for initiating the appeal has paid the reporter's fee or has made satisfactory arrangements with the reporter. The party initiating the appeal shall pay the cost of preparing the record.

(d) **Clerk's Record.**

(1) Unless otherwise stipulated by the parties, the clerk's record on appeal shall include all papers on file with the evidentiary panel, including, but not limited to, the election letter, all pleadings upon which the hearing was held, the docket sheet, the evidentiary panel's charge, the final hearing order with attachments or exhibits, any findings of fact and conclusions of law, all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.

(2) Upon receipt of a copy of the notice of appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the clerk's record to BODA. If the CDC is unable for any reason to prepare and transmit the clerk's record by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the clerk's record can be filed.

(3) The clerk's record should be in the following form:

(i) contain a detailed index identifying each document included in the record, the date of filing, and the page where it first appears;

- (ii) arranged in ascending chronological order by document by date of filing or occurrence;
- (iii) tabbed with heavy index tabs to show the beginning of each document;
- (iv) consecutively numbered in the bottom right-hand corner of the pages;
- (v) bound together so that the record will lie flat when opened; and
- (vi) contain the custodian's certification that the documents contained in the clerk's record are true and correct copies and are all the documents required to be filed.

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

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. In appeals to BODA, the non-stenographic recording must be transcribed and the transcription filed as the reporter's record.

(g) **Other Requests.** At any time before the clerk's record is prepared or within ten (10) days after service of a copy of appellant's request for the reporter's record, any party may request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the reporter's record shall be submitted by BODA to the evidentiary panel for resolution and to conform the reporter's record.

Rule 4.04 Time to File Record

(a) **Timetable.** The clerk's record and reporter's record (including a non-stenographic recording which has been transcribed) shall be filed with the BODA clerk within thirty (30) days after the date the notice of appeal is received by BODA. Failure to file either the clerk's record or the reporter's record within such time shall not affect BODA's jurisdiction, but shall be grounds for BODA exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or to 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 thirty (30) days. The BODA clerk must send a copy of this notice to all the parties and 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 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)(a) appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record; and
 - (b) the appellant is not entitled to proceed without payment of costs.

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

Rule 4.05 Copies of the Record

The record shall 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 written request to the clerk and paying copying charges.

Rule 4.06 Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within thirty (30) days after the later of the date on which the clerk's record or the reporter's record was timely filed.

(b) **Appellee's Filing Date.** Appellee's brief must be filed within thirty (30) days after the filing of appellant's brief.

(c) **Contents.** Briefs shall 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 with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are

cited. The subject matter of each point or group of points shall be indicated in the table of contents;

- (3) a brief general statement of the nature of the cause or offense and the result;
- (4) a statement of the points upon which an appeal is predicated or the issues presented for review;
- (5) a brief of the argument;
- (6) prayer for relief; and,
- (7) an appendix consisting of copies of pertinent parts of the record upon which the party relies.

(d) **Length of Briefs.** Briefs shall be typewritten or otherwise legibly printed on letter-size (8½" x 11") paper and shall not exceed fifty (50) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda or appendix containing statutes, rules, regulations, etc., except upon leave of BODA.

(e) **Amendment or Supplementation.** Briefs may be amended or supplemented upon leave of BODA.

(f) **Failure 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; or
- (2) decline to dismiss the appeal and give further direction to the case as it considers proper.

Rule 4.07 Oral Argument

(a) **Request.** A party desiring oral argument before BODA shall request same in writing and include the request in the notice of appeal or on the front cover of that party's first brief. BODA may grant or deny the request in its sole discretion. If oral argument is granted, the clerk shall notify the parties of the time and place for submission. BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case. The parties may agree to submit the case without argument after requesting same.

(b) **Time Allowed.** Each party shall have twenty (20) minutes in which to argue. BODA may, upon request of a party or in its discretion, extend or shorten the time allowed for oral argument.

Rule 4.08 Motions Generally

An application for an order or other relief shall be made by filing a motion with the BODA clerk for same supported by sufficient cause with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other papers shall 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. BODA may determine a motion before a response is filed.

Rule 4.09 Motions for Extension of Time

(a) **When due.** Any request for extension of time other than to file a brief must be filed with the BODA clerk no later than fifteen (15) days after the last day allowed for filing the item in question.

(b) **Contents.** All motions for extension of time shall be in writing, comply with BODA Internal Procedural Rule 4.08, and specify the following:

- (1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (2) if the appeal has been perfected, the date when the appeal was perfected;
- (3) the original deadline for filing the item in question;
- (4) the length of time requested for the extension;
- (5) the number of extensions of time which have been granted previously regarding the item in question; and,
- (6) the facts relied upon to reasonably explain the need for an extension.

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

Rule 4.10 Decision and Judgment

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

- (1) the panel that entered the finding(s); or,

- (2) 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) **Notice of Orders and Judgment.** When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be marked so as to be returnable to the clerk in case of nondelivery.

(c) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.

Rule 4.11 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.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Before filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, the CDC shall contact the BODA clerk to confirm whether the next regular available hearing date will comply with the thirty-day requirement of TRDP. The chair may designate a three-member panel to hear the motion, if necessary, to meet the thirty-day requirement of TRDP 2.23.

(b) Upon filing of the motion, the CDC shall serve the respondent in accordance with TRDP 2.23 with the motion and supporting documents, if any, in accordance with the TRCP and these rules. The CDC shall notify BODA of the date service is obtained on the respondent.

Rule 5.02 Hearing

Within thirty (30) days of service of the motion on the respondent, BODA shall docket and set the matter for a hearing and notify the parties of the time and place for the hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.

SECTION 6: COMPULSORY DISCIPLINE MATTERS

Rule 6.01 Initiation of Proceeding

Pursuant to TRDP 8.03, the CDC shall file a petition for compulsory discipline with BODA and serve the respondent in accordance with the TRDP and Rule 1.07 above.

Rule 6.02 Notice of Decision

The BODA clerk shall mail a copy of the judgment to the parties within ten (10) days from the date the decision is signed by the chair. Transmittal of the judgment shall include all information required by the TRDP and the Supreme Court.

SECTION 7: RECIPROCAL DISCIPLINE MATTERS

Rule 7.01 Initiation of Proceeding

(a) Pursuant to TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction.

(b) The petition shall 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 copy of the order or judgment, if any, rendered against the respondent. The CDC shall serve the respondent in accordance with Rule 1.07 above.

Rule 7.02 Order to Show Cause

Upon the filing of the petition with BODA, the chair shall immediately issue a show cause order including a hearing setting notice and forward it to the CDC, who shall serve the order on the respondent. The CDC shall notify BODA of the date service is obtained.

Rule 7.03 Attorney's Response

If, on or before the thirtieth day after service of the show cause order and hearing notice by the CDC, the respondent does not file an answer 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 for reciprocal discipline.

SECTION 8: DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01 Appointment of District Disability Committee

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

(b) Upon receiving an evidentiary panel's finding or the CDC's report that an attorney is believed to be suffering from a disability, the BODA chair shall appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. The BODA clerk shall notify the CDC and respondent that a committee has been appointed and notify the respondent where the procedural rules governing disability proceedings are available.

(c) A respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing in writing and enter into an agreed judgment of indefinite disability suspension or probated suspension, provided that the respondent is competent to so waive the hearing. If the respondent is not represented, the waiver shall include a statement by the respondent that he has been advised of his right to have counsel appointed for him and that he waives that right.

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

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

Rule 8.02 Hearing Order

(a) Upon being notified that the District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the BODA clerk and then serve upon the respondent either in person or by certified mail, return receipt requested with delivery restricted to the respondent as addressee with a copy by first class mail, a proposed hearing order containing a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. If service is by certified mail, the return receipt with the respondent's signature must be filed with the BODA clerk.

(b) The respondent shall, within twenty (20) days after receiving the CDC's proposed hearing order, file with the BODA clerk and serve the CDC by certified mail a proposed hearing order including a list of names and addresses of all witnesses expected to be called to testify before the District Disability Committee and all exhibits expected to be offered. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.

(c) The District Disability Committee chair may adopt either the CDC's proposed hearing order, the respondent's proposed hearing order, or an order of his or her own. The BODA clerk shall prepare the final hearing order at the instruction of the District Disability Committee chair and send to the parties by first class mail. The BODA clerk shall set the final hearing date at the instruction of the chair. The adopted order shall be the final hearing order and shall contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the respondent.

(d) Requests for an extension of time to file the proposed hearing order by either party must be by written motion filed with the BODA clerk.

Rule 8.03 Provisions for Physical or Mental Examinations

(a) Upon motion by the CDC or upon its own motion, the District Disability Committee may order the respondent to submit to a physical and/or mental examination by a qualified health care or mental health care professional. The respondent shall be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination. Any objections(s) to the motion for an exam and request for a hearing shall be filed with the BODA clerk within fifteen (15) days of receipt of the motion.

(b) The examining professional shall file with the BODA clerk his detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, and deliver a copy to the CDC and to the respondent.

(c) Nothing contained herein shall be construed to limit the respondent's right to an examination by a professional of his choice in addition to any exam ordered by BODA.

Rule 8.04 Ability to Compel Attendance

The respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the respondent and the CDC, by requesting a subpoena be issued 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 notice transmitting the CDC's proposed hearing order shall state that the respondent may request appointment of counsel by BODA to represent him or her at the disability hearing.

(b) If the respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be filed with the BODA clerk within sixty (60) days of the date respondent receives the CDC's proposed hearing order. Any request for appointment of counsel after sixty (60) days from the date of receipt of the proposed hearing order must show good cause for the failure to do so timely and that the request is not sought for delay only.

Rule 8.06 Limited Discovery

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the BODA clerk a verified written request for discovery showing good cause and substantial need with the proposed hearing order.

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the final hearing order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may not be based upon the granting or denial of a discovery request without a showing of material unfairness or substantial harm.

Rule 8.07 Hearing

(a) 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 shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the chair. No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRE.

(b) Such proceedings shall begin and conclude no earlier than thirty (30) days from the date the respondent receives the CDC's proposed hearing order nor later than ninety (90) days from that date; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act. Nothing herein shall be construed to limit the parties' right to request a continuance of the hearing for good cause.

(c) If the Committee is unable for any reason to hold a hearing within ninety (90) days of the date the respondent receives the proposed hearing order, BODA may appoint a new committee to handle the case.

Rule 8.08 Notice of Decision

The District Disability Committee shall certify its finding and any recommendations to BODA which shall issue the final judgment in the matter.

Rule 8.09 Confidentiality

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

SECTION 9: 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. All such petitions shall be filed with the BODA clerk. The petitioner shall also serve a copy of the petition on the CDC as set forth in TRDP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with the TRDP and these rules.

(b) The petition shall set forth 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 shall 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 seal all or any part of the record of the proceeding.

Rule 9.02 Discovery

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

Rule 9.03 Physical or Mental Examinations

(a) BODA may order the petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC or its own motion. The petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The petitioner shall 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 shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions.

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

(e) Nothing contained herein shall be construed to limit the petitioner's right to an examination by a professional of his 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 such other orders as protecting the public and the petitioner's potential clients may require.

SECTION 10: APPEALS FROM BODA TO THE SUPREME COURT

Rule 10.01 Docketing by the Clerk

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations on compulsory discipline, reciprocal discipline, revocations of probation, and disability suspensions will be docketed by the clerk of the Supreme Court in the same manner as petitions for review.

(b) No fee shall be charged by the clerk for filing any appeal from BODA decisions.

(c) The notice of appeal must be filed directly with the clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within thirty (30) days thereafter.

(d) The BODA clerk shall include the information contained in subpart (c) above with transmittal of each final determination to the parties.

Rule 10.02 Appellate Rules to Apply

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, revocations of probation, and disability suspension cases will be announced on the Court's orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.

SUPREME COURT, STATE OF COLORADO

ORIGINAL PROCEEDING IN DISCIPLINE BEFORE
THE PRESIDING DISCIPLINARY JUDGE
1300 Broadway, Suite 250
Denver, Colorado 80203

Complainant:
THE PEOPLE OF THE STATE OF COLORADO

Respondent:
JOHN WILLIAM TINDER, # 39915

Geanne R. Moroye, #17476
Assistant Regulation Counsel
Attorneys for Complainant
1300 Broadway, Suite 500
Denver, Colorado 80203
Telephone: (303) 457-5800x7813
Fax No.: (303) 501-1141

Darren Randal Cantor, # 15932
Respondent's Counsel
1127 Auraria Parkway Suite 201 B
Denver, CO 80204
Telephone: 303-534-5722
Fax No:

FILED

APR 09 2014

PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF COLORADO

▲ COURT USE ONLY ▲

Case Number:

14 PDJ 032

Supreme Court

State of Colorado

Certified to be a full, true and correct copy

MAY 16 2014

Office of the
Presiding Disciplinary Judge

By 

**STIPULATION, AGREEMENT AND AFFIDAVIT CONTAINING THE
RESPONDENT'S CONDITIONAL ADMISSION OF MISCONDUCT**

On this 1st day of April, 2014, Geanne R. Moroye, Assistant Regulation Counsel, and John William Tinder, the Respondent who is represented by attorney Darren Randal Cantor in these proceedings, enter into the following Stipulation, Agreement, and Affidavit Containing Respondent's Conditional Admission of Misconduct ("Stipulation") and submit the same to the Presiding Disciplinary Judge for his consideration.

RECOMMENDATION: Six-month suspension, all stayed upon

Exhibit
1

successful completion of a two-year period of probation, with conditions including trust account school and taking and passing the Multistate Professional Responsibility Exam and costs.

1. The Respondent has taken and subscribed to the oath of admission, was admitted to the bar of this Court on June 23, 2008, and is registered as an attorney upon the official records of this Court, registration no. 39915. Respondent is subject to the jurisdiction of this Court and the Presiding Disciplinary Judge in these proceedings.

2. Respondent enters into this Stipulation freely and voluntarily. No promises have been made concerning future consideration, punishment, or lenience in the above-referenced matter. It is Respondent's personal decision, and Respondent affirms there has been no coercion or other intimidating acts by any person or agency concerning this matter.

3. This matter has not become public under the operation of C.R.C.P. 251.31(c) as amended. However, Respondent specifically acknowledges that, if the Presiding Disciplinary Judge should decide to accept this Stipulation, and impose the agreed-to discipline contained herein, then this Stipulation and the discipline imposed will be matters of public record.

4. Respondent is familiar with the rules of the Colorado Supreme Court regarding the procedure for discipline of attorneys and with the rights provided by those rules. Respondent acknowledges the right to a full and complete evidentiary hearing on the above-referenced complaint. At any such hearing, Respondent would have the right to be represented by counsel, present evidence, call witnesses, and cross-examine the witnesses presented by Complainant. At any such formal hearing, Complainant would have the burden of proof and would be required to prove the charges contained in the complaint with clear and convincing evidence. Nonetheless, having full knowledge of the right to such a formal hearing, Respondent waives that right.

5. Respondent and Complainant specifically waive the right to a hearing pursuant to C.R.C.P. 251.22(c)(1).

6. Respondent and Complainant stipulate to the following facts and conclusions:

- a. Respondent represented Mr. Majd in a bankruptcy proceeding 12-15764-HRT, which was filed on March 27, 2012.
- b. Respondent previously represented Mr. Majd and his family in numerous civil cases.
- c. Soon after the bankruptcy case was filed, Mr. Majd was charged with criminal offenses in Adams, Broomfield and Denver Counties. The complaints alleged theft and fraud. The criminal cases contained the same factual basis as the civil matters and involved many of the same individuals.
- d. On August 1, 2013 the Bankruptcy Court entered an order approving a settlement agreement in which Mr. Majd agreed to pay the trustee \$150,000 in two payments. The first payment, in the amount of \$105,000 was due on August 8, 2013. An executed promissory note for \$45,000 was due on October 30, 2013.
- e. On August 28, 2013 Complainant Mark Larson, counsel for the trustee, having not received the payment, notified Respondent that unless the payment was received by Friday, August 30, 2013, the trustee would move the court to object to Mr. Majd's discharge.
- f. On Friday, August 30, 2013 at about 4:17 p.m., Respondent called Complainant and left the following message:

Mr. Larson, This is John Tinder. I was calling in reference to the Estate of Ali Majd bankruptcy case. We have a deadline of 5:00 p.m. today for the \$105,000 settlement check. I have the funds and I've deposited them in the COLTAF account from different family members and friends and, um...I'm heading your way to drop off the ... uh...the COLTAF check. However, traffic is exceedingly difficult, so, uh, I wanted to make sure that you understood that I have the funds, they are going to be delivered to you. I do not know if it will be 5:00 p.m. or later when the check is delivered. Hopefully,

somebody is still there to [inaudible] they are directed towards you. They are verified funds because I put them in the COLTAF account. So if you could call me back on Monday or Tuesday I would appreciate it. 720-375-2869. Thanks.

g. At 5:26 p.m. Complainant emailed Respondent stating: "We have not yet received the funds as promised. Please let me know the status."

h. At 5:58 p.m. Respondent responded in writing: "I tyrned (sic) around because I could not get to you in time. I can turn around a few (sic) again or I can be (sic) there first thing Tuesday. John"

i. On Tuesday September 3, at 10:22 a.m., Complainant emailed Respondent, stating: "First thing Tuesday has come and gone with no funds delivered by you. I expect you to deliver funds before noon."

j. At about 11:39 a.m. Respondent left the following voicemail:

Hey Mark this is John Tinder. It's 11:40, uh, calling on the Estate of Lee Majd, um, I got your message and I apologize that we weren't able to get the, uh, the check to you this morning. I...I'm being very straight forward with you. I'm not trying to play games, uh, you know as an officer of the court I'm trying to...to honor the agreement. My problem this morning is that the bank has not released the funds and I'm a little bit worried about handing you the ...the COLTAF check. I know I was prepared to give it to you on Friday, and I'm still prepared to give it to you, it's just we deposited the 105 in cash and for some reason the, uh, the bank today, uh they told me the cash would be unavailable immediately, which is why I was on my way to bring it to you and, uh and now there is a hold on half of it and I'm trying

to get ahold of the bank manager to ask why there's a hold on cash. But, um, I...I'm expecting a call from him at any moment. I am downtown I'm...I'm out in front of the DA's office actually, at the corner of, uh, Colfax and 14th, so I'm right here and I have the check with me. So, um, I apologize I wanted to talk to you in person about this, but do give me a call back, I appreciate it. 720-375-6829. Like I said, I could bring the COLTAF check to you and I can deliver it to you it's just that right now that there's a hold on half of it. So...um...please call back. Thank you, bye.

k. In response to the voice mail, Complainant told Respondent that the check must be delivered to his office that day.

l. At about 4:48 p.m. Respondent left the following voice message on Complainant's phone:

Mr. Larson this is John Tinder. It is about 4:49. Um, I am driving back from Boulder I had a motions hearing it went long because we were doing expert qualifications, and anyhow, so I had Mr. Majd come and pick up the COLTAF check from my office and he's headed towards you guys right now. Um, I have confirmed with your secretary that somebody will be in the office...in your email you said that it was okay if we were past 5. He's there, it's I-25, it's kind of a parking lot right now. He said he is going to be 5 or 10 minutes late depending when traffic breaks up. He is not authorized to talk with you, so he shouldn't talk to you. He's just going to drop off the COLTAF check. I just also wanted to indicate that I have not received a phone call from Wells Fargo. I haven't had a chance to check the account to see if the cash is unfrozen, so...um...I will do that when I get back to

my office. Although, I don't know when I will get back to my office because the traffic coming up 36 is slowed down to a crawl at Broomfield as well. So...um...I'm gonna try and figure all this stuff out for you, but that check will be in your hands...um...hopefully in the next, uh, 30 minutes or less so that you know that we did write it out, and it is there, and I'm just waiting. Call back if you need to 720-375-6829. I will call you the moment I talk to the bank officials or when I find something out I'll call you back. Thanks.

m. Mr. Majd delivered the check to Mr. Larson's office at about 6:10 p.m. The check was written on Wells Fargo account number 973529157 titled "Law Office of John W. Tinder – COLTAF" in the amount of \$105,000.00 and written to Jeffrey A. Weinman, Chapter 7 Trustee - Estate Ali Majd. The check was signed by Respondent and dated August 30, 2013.

n. On Wednesday, September 4, 2013, the following email exchange took place:

1:19 p.m. Complainant – "Unless I hear otherwise, I am going to deliver this check to Jeff Weinman and he will deposit the check today." (Jeff Weinman is the Trustee in the bankruptcy matter).

1:23 p.m. Respondent – "let me call the bank again. I will e-mail you again/call you shortly."

4:23 p.m. Respondent – "Still no return call from the bank Mgr and still no lift on hold. I have an 8:30 tomorrow, then schedule clear. I am going to go into my Wells Fargo business branch tomorrow after court and find out why nobody is returning my call."

o. On Thursday September 5, 2013, Complainant emailed Respondent and informed him that the check had been delivered for deposit to Mr. Weinman's office.

- p. Respondent contacted Mr. Weinman's office on September 5 and requested the check not be deposited until Friday September 6, 2013.
- q. The check was deposited on Monday, September 9, 2013.
- r. On September 11, 2013, the Trustee was informed that the check was returned unpaid due to a stop payment order put in place by Respondent.
- s. Complainant contacted Respondent by email informing him that check was returned because of the stop payment order. Respondent did not respond to the email.
- t. When the August 30, 2013 extended deadline imposed by Complainant arrived, Mr. Majd had not provided the funds to Respondent and in fact never deposited the required funds into Respondent's COLTAF account.
- u. Respondent admits the information in his communications to Mr. Larson and the Trustee was untrue and that the funds were never placed in his COLTAF account. However, Respondent told investigators that when the funds were delivered to Mr. Larson on September 3, 2013, Mr. Majd had assured Respondent that the money had been deposited into Respondent's COLTAF account. Respondent admitted that he made no effort to confirm the deposit had actually been made until after the check had already been delivered to Mr. Larson. Respondent went on line during the evening of September 3, 2013 and discovered Mr. Majd had not made the deposit. Respondent made no efforts to notify Mr. Larson or Mr. Weinman that the required funds were not in his COLTAF account.
- v. On September 12, 2013, the Trustee filed a Complaint Objecting to the Debtor's Discharge. The Bankruptcy Court vacated the Settlement Agreement.
- w. On November 26, 2013, the Trustee filed a Complaint against Respondent alleging a violation of C.R.S. §13-21-109, Recovery of Damages for Checks, Drafts or Orders not Paid Upon Presentment.

The Trustee is seeking treble damages (\$315,000.00) plus interest, court costs and attorney fees. The matter is pending.

x. Through Respondent's conduct described above, Respondent has engaged in conduct constituting grounds for the imposition of discipline pursuant to C.R.C.P. 251.5. Respondent has also violated Colo. RPC 8.4(c).

7. Pursuant to C.R.C.P. 251.32, Respondent agrees to pay costs in the amount of \$91.00 (a copy of the statement of costs is attached hereto as Exhibit 1) incurred in conjunction with this matter within thirty-five (35) days after acceptance of the Stipulation by the Presiding Disciplinary Judge, made payable to Colorado Supreme Court Attorney Regulation Offices. Respondent agrees that statutory interest shall accrue from the date that the Presiding Disciplinary Judge accepts this Stipulation. Should Respondent fail to make payment of the aforementioned costs and interest within thirty-five (35) days, Respondent specifically agrees to be responsible for all additional costs and expenses, such as reasonable attorney fees and costs of collection incurred by Complainant in collecting the above stated amount. Complainant may amend the amount of the judgment for the additional costs and expenses by providing a motion and bill of costs to the Presiding Disciplinary Judge, which identifies this paragraph of the Stipulation and Respondent's default on the payment.

8. This Stipulation represents a settlement and compromise of the specific claims and defenses pled by the parties, and it shall have no meaning or effect in any other lawyer regulation case involving another respondent attorney.

9. This Stipulation is premised and conditioned upon acceptance of the same by the Presiding Disciplinary Judge. If for any reason the Stipulation is not accepted without changes or modification, then the admissions, confessions, and Stipulations made by Respondent will be of no effect. Either party will have the opportunity to accept or reject any modification. If either party rejects the modification, then the parties shall be entitled to a full evidentiary hearing; and no confession, Stipulation, or other statement made by Respondent in conjunction with this offer to accept discipline of a six-month stayed suspension may be subsequently used. If the Stipulation is rejected, then the matter will be heard and considered pursuant to C.R.C.P. 251.18.

10. The Office of Attorney Regulation Counsel has notified or will notify shortly after the parties sign this agreement, the complaining witness(es) in the

matter(s) of the proposed disposition.

11. Respondent's counsel, Darren Randal Cantor, hereby authorizes Respondent, John William Tinder, and the non-lawyer individual in the Office of Attorney Regulation Counsel who is responsible for monitoring the conditions set forth herein to communicate directly concerning scheduling and administrative issues or questions. Respondent's counsel will be contacted concerning any substantive issue which may arise.

PRIOR DISCIPLINE

12. None.

ANALYSIS OF DISCIPLINE

13. The Colorado Supreme Court has observed that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases." *In re Attorney F*, 285 P.3d 322, 327 (Colo. 2012), citing *In re Rosen*, 198 P.3d 116, 121. (Colo. 2008). However, it is appropriate for the Hearing Board to consider prior Colorado Supreme Court decisions regarding the imposition of sanctions for attorney misconduct. *Id.* at 327. To arrive at a presumptive sanction, the misconduct first should be analyzed in terms of the duty violated, the attorney's mental state, and the extent of the actual or potential injury caused by the misconduct. Then, to arrive at the ultimate sanction, aggravating and mitigating factors should be taken into account. *Id.* at 326.

14. Pursuant to American Bar Association *Standards for Imposing Lawyer Sanctions* 1991 and Supp. 1992 ("ABA Standards"), §3.0, the Court should consider the following factors generally:

- a. The duty violated: Respondent violated his duty of candor to the public as well as duties to the legal profession.
- b. The lawyer's mental state: Knowing.
- c. The actual or potential injury caused by the lawyer's misconduct: Respondent caused harm to the public by repeatedly misrepresenting the possession of settlement funds in his COLTAF account. He exacerbated the harm

by placing a stop payment order on a check he had written to the Trustee. Respondent's actions caused serious harm to the reputation of the legal profession.

d. The existence of aggravating or mitigating factors: Factors in aggravation which are present include: Dishonest or selfish motive, a pattern of misconduct, multiple offenses; ABA *Standards* §9.22(b),(c),(d). Factors in mitigation include: Absence of a prior disciplinary record, full and free disclosure to disciplinary board and cooperative attitude toward proceedings, remorse; ABA *Standards* §9.32(a), (e), (l).

15. Pursuant to ABA *Standard* §5.13 reprimand is generally appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

16. *In re Rosen*, 198 P.3d 116, (Colo. 2008), the Colorado Supreme Court imposed a six-month stayed suspension with probation where Respondent continued to negotiate with an insurance company on behalf of his client, even though his client was deceased.

17. Considering all of the factors described above, including the repeated and overt misrepresentations made by the Respondent, a six-month suspension stayed for a probationary period of two years, with conditions, is an appropriate sanction. Respondent meets the eligibility requirements for probation set forth in C.R.C.P. 251.7(a).

CONDITIONS

18. Probation. The parties stipulate that Respondent is eligible for probation pursuant to C.R.C.P. 251.7(a). Successful completion of all these terms shall stay the imposition of the six-month suspension.

- a. Respondent shall be on probation for a two-year period of time.
- b. Mandatory Rule Condition. During the period of probation, Respondent shall not engage in any further violation of the Colorado Rules of Professional Conduct. *See* C.R.C.P. 251.7(b) ("The conditions [of probation]...shall include no further violations

of the Colorado Rules of Professional Conduct”).

- c. Respondent shall attend and successfully pass the one-half day trust account school sponsored by the Office of Attorney Regulation Counsel within one year of the date this Stipulation is approved and pay the costs associated therewith. Respondent shall register and pay the costs of the trust account school within thirty-five (35) days of the date this Stipulation is approved. Attendance at the trust account school will count as 5 general CLE credits, including 5 ethics credits. Respondent may copy a registration form for the class on-line at www.coloradosupremecourt.com. (Go to *Attorney Regulation Counsel*, then *Trust Account and Ethics Registration Forms*, and then *Trust Account School*.) Instructions for registering are on the registration form.
- d. During the period of probation, Respondent shall take and pass the Multistate Professional Responsibility Exam. A minimum scaled score of 85 is required to pass the exam.

19. **Violation of Conditions.** If, during the period of probation, the Office of Attorney Regulation Counsel receives information that any condition may have been violated, the Regulation Counsel may file a motion with the Presiding Disciplinary Judge specifying the alleged violation and seeking an order that requires the attorney to show cause why the stay should not be lifted and the sanction activated for violation of the condition. *See* C.R.C.P. 251.7(e). The filing of such a motion shall toll any period of suspension and probation until final action. *Id.* Any hearing shall be held pursuant to C.R.C.P. 251.7(e). When, in a revocation hearing, the alleged violation of a condition is Respondent's failure to pay restitution or costs, the evidence of the failure to pay shall constitute *prima facie* evidence of a violation. *Id.*

20. **Successful Completion of Conditions.** Within twenty-eight (28) days and no less than fourteen (14) days prior to the expiration of the period of probation, Respondent shall file an affidavit with the Regulation Counsel stating that Respondent has complied with all terms of probation and shall file with the Presiding Disciplinary Judge notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. *See* C.R.C.P. 251.7(f). Upon receipt of this notice and absent objection from the Regulation Counsel, the Presiding Disciplinary Judge shall issue an order showing that the period of probation was successfully completed. *Id.* The order shall

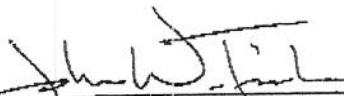
become effective upon the expiration of the period of probation. *Id.*

RECOMMENDATION FOR AND CONSENT TO DISCIPLINE

Based on the foregoing, the parties hereto recommend that a six-month suspension, all stayed, with a two-year probationary period with conditions as described above, be imposed upon Respondent. Respondent consents to the imposition of discipline of a six-month suspension, all stayed, with a two-year probationary period with conditions as described above. The parties request that the Presiding Disciplinary Judge order that the effective date of such discipline be thirty-five (35) days after the date of entry of the order.

John William Tinder, Respondent; Darren Randal Cantor, attorney for Respondent; and Geanne R. Moroye, attorney for the Complainant, acknowledge by signing this document that they have read and reviewed the above and request the Presiding Disciplinary Judge to accept the Stipulation as set forth above.

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John William Tinder
Law Office of John W. Tinder 11971 Quay
Street
Broomfield, CO 80020
Telephone: 720 375-6829
Respondent

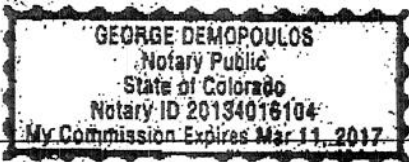
STATE OF COLORADO)
) ss:
COUNTY OF Broomfield)

Subscribed and sworn to before me this 1st day of April, 2014,
by John William Tinder, the Respondent.

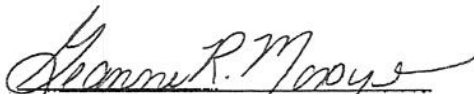
Witness my hand and official seal.


My commission expires:

3/11/17




Notary Public


Geanne R. Moroye, #17476
Assistant Regulation Counsel
1300 Broadway, Suite 500
Denver, CO 80203
Telephone: (303) 457-5800
Attorney for the Complainant


Darren Randal Cantor, #15932
1127 Auraria Parkway Suite 201 B
Denver, CO 80204
Telephone: 303-534-5722
Attorney for the Respondent

Statement of Costs

John W. Tinder

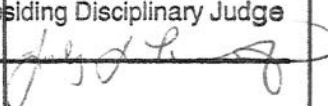
14PDJ007/13-5936

4/9/2014	Administrative Fee	<u>91.00</u>
	Amount Due	\$ 91.00

Supreme Court

State of Colorado

Certified to be a full, true and correct copy

<p>SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203</p>	<p>MAY 16 2014</p> <p>Office of the Presiding Disciplinary Judge</p> <p>By </p>
<p>Complainant: THE PEOPLE OF THE STATE OF COLORADO</p> <p>Respondent: JOHN WILLIAM TINDER</p>	<p>Case Number: 14PDJ032</p>
<p>ORDER APPROVING CONDITIONAL ADMISSION OF MISCONDUCT AND IMPOSING SANCTIONS PURSUANT TO C.R.C.P. 251.22</p>	

This matter is before the Presiding Disciplinary Judge (“the Court”) on a “Stipulation, Agreement and Affidavit Containing the Respondent’s Conditional Admission of Misconduct” filed by Geanne R. Moroye, Office of Attorney Regulation Counsel (“the People”), and Darren R. Cantor, attorney for John William Tinder (“Respondent”), on April 9, 2014. In their stipulation, the parties waive their right to a hearing under C.R.C.P. 251.22(c).

Upon review of the stipulation, the Court **ORDERS:**

1. **The stipulation is accepted and approved.**
2. **JOHN WILLIAM TINDER**, Attorney Registration Number **39915**, is **SUSPENDED** from the practice of law for a period of **SIX MONTHS, ALL STAYED** upon the successful completion of a **TWO-YEAR** period of **PROBATION**, subject to the conditions set forth in paragraph 18 of the stipulation.
3. **Successful Completion of Conditions.** Within twenty-eight days and no less than fourteen days prior to the expiration of the period of probation, Respondent shall file an affidavit with the People stating that Respondent has complied with all terms of probation and shall file with the Court notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. See C.R.C.P. 251.7(f). Upon receipt of this notice and absent objection from the People, the Court shall issue an order showing that the period of probation was successfully completed. *Id.* The order shall become effective upon the expiration of the period of probation. *Id.*
4. **Violation of Conditions.** If, during the period of probation, the People receive information that any condition may have been violated, the People may file a motion with the Court

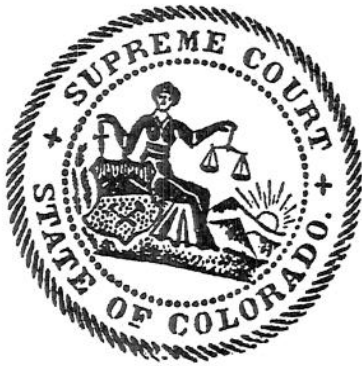
Exhibit

2

specifying the alleged violation and seeking an order that requires the attorney to show cause why the stay should not be lifted and the sanction activated for violation of the condition. See C.R.C.P. 251.7(e). The filing of such a motion shall toll any period of suspension and probation until final action. *Id.* Any hearing shall be held pursuant to C.R.C.P. 251.7(e). When, in a revocation hearing, the alleged violation of a condition is the Respondent's failure to pay restitution or costs, the evidence of the failure to pay shall constitute *prima facie* evidence of a violation. *Id.*

5. Pursuant to C.R.C.P. 251.32, Respondent shall pay costs incurred in conjunction with this matter in the amount of \$91.00 within thirty-five days of the date of this order. Costs are payable to the Colorado Supreme Court Attorney Regulation Offices. Statutory interest shall accrue from the date of this order. Should Respondent fail to pay the aforementioned costs and interest within thirty-five days, he shall be responsible for all additional costs and expenses, including reasonable attorney's fees, incurred by the People in collecting the above-stated amount. The People may seek to amend the amount of the judgment for additional costs and expenses by providing a motion and bill of costs to the Court.

THIS ORDER IS ENTERED THE 10th DAY OF APRIL, 2014. THE EFFECTIVE DATE OF THE PROBATION IS THE 15th DAY OF MAY, 2014.





WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

<p>Respondent's Counsel Darren R. Cantor 1127 Auraria Parkway, Suite 201 B Denver, CO 80204 darren@cantorlaw.net</p>	<p>Via Email</p>	<p>Martindale Hubbell Law Directory Michael Hild, Rating Consultant PO Box 31 New Providence, NJ 07974 disciplinaryaction@lexisnexis.com</p>	<p>Via Email</p>
<p>Office of Attorney Regulation Counsel Geanne R. Moroye 1300 Broadway, Suite 500 Denver, CO 80203 g.moroye@csc.state.co.us</p>	<p>Via Email</p>	<p>Metro Lawyer Referral Service 3000 South Jamaica Court, Suite 120 Aurora, CO 80014 lawyers@mlrsonline.org</p>	<p>Via Email</p>
<p>American Bar Association c/o Nadine Cignoni Office of Attorney Regulation Counsel 1300 Broadway, Suite 500 Denver, CO 80203 n.cignoni@csc.state.co.us</p>	<p>Via Email</p>	<p>Supreme Court of the United States Perry Thompson, Admissions Office 1 First Street Northeast Washington, D.C. 20543 pthompson@supremecourt.gov ptadmit@supremecourt.gov</p>	<p>Via Email</p>
<p>Board of Continuing Legal Education and Colorado Attorney Registration Elvia Mondragon 1300 Broadway, Suite 510 Denver, CO 80203 elvia.mondragon@judicial.state.co.us</p>	<p>Via Email</p>	<p>United States Bankruptcy Court Kelly Sweeney 721 19th Street, Room 117 Denver, CO 80202-2508 kelly_sweeney@cob.uscourts.gov cobml_training@cob.uscourts.gov</p>	<p>Via Email</p>
<p>Colorado Bar Association Charles Turner, Executive Director 1900 Grant Street, Suite 950 Denver, CO 80203-4309 cturner@cobar.org</p>	<p>Via Email</p>	<p>United States Court of Appeals for the Tenth Circuit Byron White United States Courthouse 1823 Stout Street Denver, CO 80257 disciplinaryorders@ca10.uscourts.gov</p>	<p>Via Email</p>
<p>Colorado Supreme Court Christopher T. Ryan 2 East 14th Avenue Denver, CO 80203 heather.petercarroll@judicial.state.co.us; liz.cunningham@judicial.state.co.us</p>	<p>Via Email</p>	<p>United States District Court, District of Colorado Alfred A. Arraj U.S. Courthouse Mark Fredrickson, Atty Services Coordinator 901 19th Street, Room A-105 Denver, CO 80294-3589 mark_fredrickson@cod.uscourts.gov edward_butler@cod.uscourts.gov</p>	<p>Via Email</p>
<p>IRS, Office of Professional Responsibility Kathy Gibbs SE: OPR, 1111, Constitutional Ave., N.W. Washington, DC 20224 kathy.a.gibbs@irs.gov</p>	<p>Via Email</p>	<p>United States Department of Justice, Executive Office of Immigration Review Jennifer J. Barnes, Disciplinary Counsel 5107 Leesburg Pike, Suite 2600 Falls Church, VA 22041 shelia.williams@usdoj.gov malhia.murad@usdoj.gov</p>	<p>Via Email</p>