

STATE BAR OF TEXAS



FILED

Jun. 10, 2020

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

Office of the Chief Disciplinary Counsel

64481

June 10, 2020

Ms. Jenny Hodgkins
Board of Disciplinary Appeals
Supreme Court of Texas
P. O. Box 12426
Austin, Texas 78711

Via e-filing filing@txboda.org

Re: *In the Matter of Guillermo Vega, State Bar Card No. 20533700*; Before the Supreme Court
of Texas Board of Disciplinary Appeals.

Dear Ms. Hodgkins:

Attached please find the Petition for Compulsory Discipline of Respondent, Guillermo Vega, which includes a Notice of Remote Hearing. Please file the original Petition with the Board. Additionally, please file-mark and acknowledge the cause number and return a copy to me.

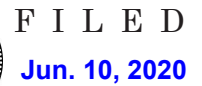
A true and correct copy of this letter, and a file-marked copy of the Petition for Compulsory Discipline and Notice of Remote Hearing will be served on Mr. Vega.

Thank you for your assistance in this matter. Please do not hesitate to call if you have any questions.

Sincerely,

Judith DeBerry
Assistant Disciplinary Counsel
State Bar of Texas

JGD/tbg
Attachment



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

PETITION FOR COMPULSORY DISCIPLINE

approximate amounts of taxable income and income taxes due and owing, whereas, as defendant then and there well knew, defendant in fact had the following approximate true amounts of taxable income for each year, upon which the following approximate true amounts of income taxes were due and owing, and defendant still owes the following additional income tax:

Count	Year	Date Filed	Claimed Taxable Income	True Taxable Income	Claimed Tax Owed	True Tax Owed	Additional Tax Due
1	2011	10/15/2012	\$9,630.00	\$378,446.00	\$4,337.00	\$128,908.00	\$126,253.00

In violation of Title 26, United States Code, Section 7201.

- B. Count 2, on or about October 15, 2012, willfully making and subscribing a U.S. Individual Income Tax Return for the calendar year 2011, which was verified by a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter in that said U.S. Individual Income Tax Return for the calendar year 2011, which was prepared and signed in the Southern District of Texas and was filed with the Internal Revenue Service, stating a material misrepresentation of his earnings for that year creating a tax deficiency owed to the United States Government, whereas he then and there knew his true earnings were in excess of those claimed. In violation of Title 26, United States Code, Section 7206(1);
- C. Count 3, on or about July 3, 2012, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filing a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about

November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Jose Luis Zuniga, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

- D. Count 4, wherein, on or about July 3, 2012, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filing a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to the a single sale, to wit, the representation of Jose Luis Duenes, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.
- E. Count 5, on or about July 3, 2012, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filing a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Armando Arismendi, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.
- F. Count 6, on or about August 31, 2012, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filing a false Report of Cash Payments over \$10,000 Received in a

Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Juan Rincon, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

G. Count 7, on or about March 21, 2011, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully failing to file a Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt on or about March 21, 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Heriberto Bazan, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

4. On or about May 17, 2016, Respondent was charged by Superseding Indictment (Exhibit 2) in Cause No. B-15-1012-S1, styled *United States of America v. Guillermo Vega, Jr.*, in the United States District Court Southern District of Texas, Brownsville Division, with:

H. Count 1, on or about the dates below, willfully attempting to evade and defeat a large part of the income tax due and owing by him to the United States of America for the following calendar years by preparing and causing to be prepared, and by signing and causing to be signed, false and fraudulent U.S. Individual Income Tax Returns, IRS forms 1040, for each of the following years, which were filed with the Internal Revenue Service on or about the following dates, wherein defendant claimed the following approximate amounts of taxable income and income taxes

due and owing, whereas, as defendant then and there well knew, defendant in fact had the following approximate true amounts of taxable income for each year, upon which the following approximate true amounts of income taxes were due and owing, and defendant still owes the following additional income tax for each of the following years:

Count	Year	Date Filed	Claimed Taxable Income	True Taxable Income	Claimed Tax Owed	True Tax Owed	Additional Tax Due
1	2011	10/15/2012	\$9,630.00	\$378,446.00	\$4,337.00	\$128,908.00	\$126,253.00

In violation of Title 26, United States Code, Section 7201.

- I. Count 2, on or about October 15, 2012, willfully making and subscribing a U.S. Individual Income Tax Return for the calendar year 2011, which was verified by a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter in that said U.S. Individual Income Tax Return for the calendar year 2011, which was prepared and signed in the Southern District of Texas and was filed with the Internal Revenue Service, stated a material misrepresentation of his earnings for that year creating a tax deficiency owed to the United States Government, whereas he then and there knew his true earnings were in excess of those claimed. In violation of Title 26, United States Code, Section 7206(1).
- J. Count 3, on or about May 17, 2016, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filing a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about

November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Jose Luis Zuniga, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

K. Count 4, on or about July 3, 2012, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filing a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to the a single sale, to wit, the representation of Jose Luis Duenes, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

L. Count 5, on or about July 3, 2012, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filing a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to the a single sale, to wit, the representation of Armando Arismendi, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

M. Count 6, on or about August 31, 2012, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filing a false Report of Cash Payments over \$10,000 Received in a

Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Juan Rincon, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

N. Count 7, on or about March 21, 2011, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully failing to file a Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt on or about March 21, 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Heriberto Bazan, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

O. Count 8, in or about January 2013, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully failing to file a Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about January 2013 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Omar Pinales AKA: Botas, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

5. On or about January 24, 2017, Respondent was charged by a second Superseding Indictment (Exhibit 3) in Cause No. B-15-1012-S2, styled *United States of America v. Guillermo*

Vega, Jr., in the United States District Court Southern District of Texas, Brownsville Division,
with:

P. Count 1, on or about the dates below, willfully attempting to evade and defeat a large part of the income tax due and owing by him to the United States of America for the following calendar years by preparing and causing to be prepared, and by signing and causing to be signed, false and fraudulent U.S. Individual Income Tax Returns, IRS forms 1040, for each of the following years, which were filed with the Internal Revenue Service on or about the following dates, wherein defendant claimed the following approximate amounts of taxable income and income taxes due and owing, whereas, as defendant then and there well knew, defendant in fact had the following approximate true amounts of taxable income for each year, upon which the following approximate true amounts of income taxes were due and owing, and defendant still owes the following additional income tax for each of the following years:

Count	Year	Date Filed	Claimed Taxable Income	True Taxable Income	Claimed Tax Owed	True Tax Owed	Additional Tax Due
1	2011	10/15/2012	\$9,630.00	\$378,446.00	\$4,337.00	\$128,908.00	\$126,253.00

In violation of Title 26, United States Code, Section 7201.

Q. Count 2, on or about October 15, 2012, willfully making and subscribing a U.S. Individual Income Tax Return for the calendar year 2011, which was verified by a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter in that said U.S. Individual Income Tax Return for the calendar year 2011, which was prepared and

signed in the Southern District of Texas and was filed with the Internal Revenue Service, stated a material misrepresentation of his earnings for that year creating a tax deficiency owed to the United States Government, whereas he then and there knew his true earnings were in excess of those claimed. In violation of Title 26, United States Code, Section 7206(1).

- R. Count 3, on or about July 3, 2012, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filing a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Jose Luis Zuniga, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.
- S. Count 4, on or about July 3, 2012, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filing a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Jose Luis Duenes, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.
- T. Count 5, on or about July 3, 2012, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and

willfully filing a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Armando Arismendi, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

U. Count 6, on or about August 31, 2012, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filing a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Juan Rincon, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

V. Count 7, on or about March 21, 2011, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully failing to file a Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt on or about March 21, 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Heriberto Bazan, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.

- W. Count 8, in or about January 2013, operating a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully failing to file a Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about January 2013 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Omar Pinales AKA: Botas, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder. In violation of Title 31, United States Code, Sections 5331 and 5322.
- X. Count 9, from in or about July 2016, corruptly, by threat, and by any threatening communication, influence, obstruct, impede and endeavored to corruptly influence, obstruct, and impede the due administration of justice in the United States of America v. Guillermo Vega, Jr., 1:15-CR-1012-S1, in that the defendant knew there was a pending judicial proceeding in the United States District Court for the Southern District of Texas, by falsely accusing and attempting to falsely accuse a material witness, Maria Amaro, who would testify in the prosecution of the defendant in United States of America v. Guillermo Vega, Jr., 1:15-CR-1012-S1, by alleging that the witness had communicated the criminal offense of forgery, in which no such crime had been committed and by attempting to have said witness arrested prior to her testimony in the pending trial of the defendant. In violation of Title 18 United States Code, Sections 1503 and 1503(a).
- Y. Count 10, from in or about July 2016, knowingly engaging in misleading conduct toward Maria Amaro by falsely accusing and attempting to falsely accuse Maria Amaro of the criminal offense of forgery, with the intent to influence, delay, and

prevent, the testimony of Maria Amaro in an official proceeding, in the United States of America v. Guillermo Vega, Jr., 1:15-CR-1012-S1. In violation of Title 18 United States Code, Sections 1512(b)(1).

6. On or about May 23, 2018, a Plea Agreement (Exhibit 4) was entered in Cause No. B-15-1012-S2, styled *United States of America v. Guillermo Vega, Jr.*, in the United States District Court Southern District of Texas, Brownsville Division, wherein the defendant agrees to plead guilty to Count 7 of the indictment. Count 7 of the indictment charges the defendant with Failure to file a Report of Cash Payments over \$10,000 received in a Trade or Business, in violation of Title 31, United States Code, Sections 5331 and 5322. The Government shall dismiss all remaining counts at the time of sentencing. The defendant agrees to make full restitution of the tax loss and will pay to the United States District Clerk a special assessment in the amount of one-hundred dollars (\$100.00) per count of conviction.

7. On or about October 24, 2019, a Judgment in a Criminal Case (Exhibit 5) was entered in Cause No. 1:15-CR-01012-S2-001, styled *United States of America v. Guillermo Vega, Jr.*, in the United States District Court Southern District of Texas, Brownsville Division, wherein Respondent pleaded guilty to count(s) 7ss on May 23, 2018, Title 31 U.S.C. Section 5331 and 5332, Failing to File a Report of Cash Payment Over \$10,000 (FinCEN Form 8300) Received in a Trade or Business. The defendant was committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of thirteen (13) months. Upon release from imprisonment, Defendant will be on supervised release for a term of three (3) years. Respondent was further ordered to pay penalties of an assessment in the amount of \$100, a fine in the amount \$100,000, and restitution in the amount of \$126,253.

8. Respondent, Guillermo Vega, Jr., whose bar card number is 20533700, is the same person as the Guillermo Vega, Jr. who is the subject of the Indictment, Superseding Indictment, second Superseding Indictment, Plea Agreement, and Judgment in a Criminal Case, described above, true and correct copies of which are attached hereto as Exhibits 1 through 5.

9. Attached hereto as Exhibit 6 and made a part hereof for all intents and purposes as if the same were copied verbatim herein is a true and correct copy of an affidavit of Judith Gres DeBerry, Attorney of Record for Petitioner herein, attesting to the fact that Respondent is the same person as the person who is the subject of the Indictment, superseding Indictment, second superseding Indictment, Plea Agreement, and Judgment in a Criminal Case, entered in the Vega criminal case. Petitioner expects to introduce the original of said affidavit at the time of hearing of this cause.

10. The offenses for which Respondent was convicted are intentional crimes as defined by Rule 1.06(V), Texas Rules of Disciplinary Procedure. They are as well serious crimes as defined by Rule 1.06(GG), Texas Rules of Disciplinary Procedure.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that Respondent be given notice of these proceedings as provided by law and, upon hearing of this matter, that the Board enter its order disbarring Respondent and for such other and further relief to which Petitioner may be entitled to receive, including costs of court and attorney's fees.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Judith Gres DeBerry
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
STATE BAR OF TEXAS

P.O. Box 12487, Capitol Station
Austin, Texas 78711-2487
Telephone: 512.427.1350
Facsimile: 512.427.4167
Email: jdeberry@texasbar.com



Judith Gres DeBerry
State Bar Card No. 24040780
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent for personal service on Guillermo Vega, Jr., 127 Starcrest Drive, Brownsville, Texas 78521, on this 10th day of June, 2020.



Judith Gres DeBerry

NOTICE OF REMOTE HEARING

Notice is hereby given that a trial on the merits of the Petition for Compulsory Discipline heretofore sent to be filed with the Board of Disciplinary Appeals on this day will be held on July 31, 2020, at 9:00 a.m. by remote appearance.

<https://txcourts.zoom.us/j/94371763361>

Meeting ID: 943 7176 3361

Topic: BODA En Banc Hearings

Time: July 31, 2020 09:00 AM Central Time (US and Canada)

To join the Zoom trial by Video:

Go to:

<https://txcourts.zoom.us/j/94371763361>

Join the meeting by typing in the Meeting ID:
943 7176 3361

To appear by video on Zoom, you will need to have an electronic device with an internet connection. You may use a smart phone, iPad/tablet, or webcam/built in camera with sound and video. You will also need to install the free Zoom App before the conference begins.

To join the Zoom trial by Phone/Audio only:

Dial by your location or find your local number:

<https://txcourts.zoom.us/j/94371763361>

One tap mobile

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+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Germantown)

Then type in the Meeting ID: **943 7176 3361**



Judith Gres DeBerry

Sealed
Public and unofficial staff access
to this instrument are
prohibited by court order.

United States District Court
Southern District of Texas
FILED

NOV 12 2015

David J. Bradley, Clerk of Court

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

UNITED STATES OF AMERICA

v.

GUILLERMO VEGA, JR.

§
§
§
§
§

Criminal No.

B-15-1012

**SEALED
INDICTMENT**

The Grand Jury charges:

COUNT ONE

On or about the dates below, in the Brownsville Division of the Southern District of Texas and elsewhere within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the following calendar years by preparing and causing to be prepared, and by signing and causing to be signed, false and fraudulent U.S. Individual Income Tax Returns, IRS forms 1040, for each of the following years, which were filed with the Internal Revenue Service on or about the following dates, wherein defendant claimed the following approximate amounts of taxable income and income taxes due and owing, whereas, as defendant then and there well knew, defendant in fact had the following approximate true amounts of taxable income for each year, upon which the following approximate true amounts of income taxes were due and owing, and defendant still owes the following additional income tax due for each of the following years:



1

TRUE COPY I CERTIFY
ATTEST
DAVID J. BRADLEY Clerk of Court
By Edna Ponce
Deputy Clerk

Count	Year	Date Filed	Claimed Taxable Income	True Taxable Income	Claimed Tax Owed	True Tax Owed	Additional Tax Due
1	2011	10/15/2012	\$9,630.00	\$378,446.00	\$4,337.00	\$128,908.00	\$128,253.00

In violation of Title 26, United States Code, Section 7201.

COUNT TWO

On or about October 15, 2012, in the Southern District of Texas and elsewhere and within the jurisdiction of the Court, the Defendant,

GUILLERMO VEGA, JR.

a resident of Brownsville, Texas, did willfully make and subscribe a U.S. Individual Income Tax Return for the calendar year 2011, which was verified by a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter in that said U.S. Individual Income Tax Return for the calendar year 2011, which was prepared and signed in the Southern District of Texas and was filed with the Internal Revenue Service, stated a material misrepresentation of his earnings for that year creating a tax deficiency owed to the United States Government, whereas he then and there knew his true earnings were in excess of those claimed.

In violation of Title 26, United States Code, Section 7206(1).

COUNT THREE

On or about July 3, 2012, in the Southern District of Texas and elsewhere and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filed a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Jose Luis Zuniga, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT FOUR

On or about July 3, 2012, in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filed a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Jose Luis Duenes, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT FIVE

On or about July 3, 2012, in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filed a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Armando Arismendi, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT SIX

On or about August 31, 2012, in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filed a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Juan Rincon, as

required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT SEVEN

On or about March 21, 2011 in the Southern District of Texas and within the and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

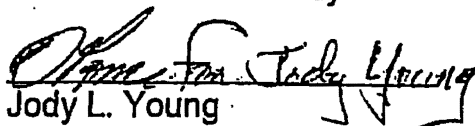
operated a trade or business, as defined in Title 31, Code of Federal Regulations, Sec section 1010.330(c)(11), and knowingly and willfully failed to file a Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt on or about March 21, 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Heriberto Bazan, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

A True Bill:

Foreperson of the Grand Jury

Kenneth Magidson
United States Attorney


Jody L. Young
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

United States District Court
Southern District of Texas
FILED

MAY 17 2016

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA

v.

GUILLERMO VEGA, JR.

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Criminal No. B-15-1012-S1

**SUPERSEDING
INDICTMENT**

The Grand Jury charges:

COUNT ONE

On or about the dates below, in the Brownsville Division of the Southern District of Texas and elsewhere within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the following calendar years by preparing and causing to be prepared, and by signing and causing to be signed, false and fraudulent U.S. Individual Income Tax Returns, IRS forms 1040, for each of the following years, which were filed with the Internal Revenue Service on or about the following dates, wherein defendant claimed the following approximate amounts of taxable income and income taxes due and owing, whereas, as defendant then and there well knew, defendant in fact had the following approximate true amounts of taxable income for each year, upon which the following approximate true amounts of income taxes were due and owing, and defendant still owes the following additional income tax due for each of the following years:

EXHIBIT

2

1

**TRUE COPY I CERTIFY
ATTEST**

DAVID J. BRADLEY Clerk of Court
By Edna Ponce
Deputy Clerk

Count	Year	Date Filed	Claimed Taxable Income	True Taxable Income	Claimed Tax Owed	True Tax Owed	Additional Tax Due
1	2011	10/15/2012	\$9,630.00	\$378,446.00	\$4,337.00	\$128,908.00	\$126,253.00

In violation of Title 26, United States Code, Section 7201.

COUNT TWO

On or about October 15, 2012, in the Southern District of Texas and elsewhere and within the jurisdiction of the Court, the Defendant,

GUILLERMO VEGA, JR.

a resident of Brownsville, Texas, did willfully make and subscribe a U.S. Individual Income Tax Return for the calendar year 2011, which was verified by a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter in that said U.S. Individual Income Tax Return for the calendar year 2011, which was prepared and signed in the Southern District of Texas and was filed with the Internal Revenue Service, stated a material misrepresentation of his earnings for that year creating a tax deficiency owed to the United States Government, whereas he then and there knew his true earnings were in excess of those claimed.

In violation of Title 26, United States Code, Section 7206(1).

COUNT THREE

On or about July 3, 2012, in the Southern District of Texas and elsewhere and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

COUNT FIVE

On or about July 3, 2012, in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filed a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Armando Arismendi, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT SIX

On or about August 31, 2012, in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filed a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Juan Rincon, as

required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT SEVEN

On or about March 21, 2011 in the Southern District of Texas and within the and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Sec section 1010.330(c)(11), and knowingly and willfully failed to file a Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt on or about March 21, 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Heriberto Bazan, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT EIGHT

In or about January 2013 in the Southern District of Texas and within the and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Sec section 1010.330(c)(11), and knowingly and willfully failed to file a Report of Cash

Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about January 2013 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Omar Pinales AKA: Botas, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

A True Bill:

Foreperson of the Grand Jury

Kenneth Magidson
United States Attorney


Jody L. Young
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JAN 24 2017

David J. Bradley, Clerk

UNITED STATES OF AMERICA

v.

GUILLERMO VEGA, JR.

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§
§
§
§

Criminal No. **B-15-1012-S2**

SUPERSEDING
INDICTMENT

The Grand Jury charges:

COUNT ONE

On or about the dates below, in the Brownsville Division of the Southern District of Texas and elsewhere within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the following calendar years by preparing and causing to be prepared, and by signing and causing to be signed, false and fraudulent U.S. Individual Income Tax Returns, IRS forms 1040, for each of the following years, which were filed with the Internal Revenue Service on or about the following dates, wherein defendant claimed the following approximate amounts of taxable income and income taxes due and owing, whereas, as defendant then and there well knew, defendant in fact had the following approximate true amounts of taxable income for each year, upon which the following approximate true amounts of income taxes were due and owing, and defendant still owes the following additional income tax due for each of the following years:



TRUE COPY I CERTIFY
ATTEST
DAVID J. BRADLEY Clerk of Court
By Edith Ponce
Deputy Clerk

Count	Year	Date Filed	Claimed Taxable Income	True Taxable Income	Claimed Tax Owed	True Tax Owed	Additional Tax Due
1	2011	10/15/2012	\$9,630.00	\$378,446.00	\$4,337.00	\$128,908.00	\$126,253.00

In violation of Title 26, United States Code, Section 7201.

COUNT TWO

On or about October 15, 2012, in the Southern District of Texas and elsewhere and within the jurisdiction of the Court, the Defendant,

GUILLERMO VEGA, JR.

a resident of Brownsville, Texas, did willfully make and subscribe a U.S. Individual Income Tax Return for the calendar year 2011, which was verified by a written declaration that it was made under the penalties of perjury and which he did not believe to be true and correct as to every material matter in that said U.S. Individual Income Tax Return for the calendar year 2011, which was prepared and signed in the Southern District of Texas and was filed with the Internal Revenue Service, stated a material misrepresentation of his earnings for that year creating a tax deficiency owed to the United States Government, whereas he then and there knew his true earnings were in excess of those claimed.

In violation of Title 26, United States Code, Section 7206(1).

COUNT THREE

On or about July 3, 2012, in the Southern District of Texas and elsewhere and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filed a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Jose Luis Zuniga, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT FOUR

On or about July 3, 2012, in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filed a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Jose Luis Duenes, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT FIVE

On or about July 3, 2012, in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filed a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Armando Arismendi, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT SIX

On or about August 31, 2012, in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Section 1010.330(c)(11), and knowingly and willfully filed a false Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about November 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Juan Rincon, as

required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT SEVEN

On or about March 21, 2011 in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Sec section 1010.330(c)(11), and knowingly and willfully failed to file a Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt on or about March 21, 2011 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Heriberto Bazan, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT EIGHT

In or about January 2013 in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

operated a trade or business, as defined in Title 31, Code of Federal Regulations,

operated a trade or business, as defined in Title 31, Code of Federal Regulations, Sec section 1010.330(c)(11), and knowingly and willfully failed to file a Report of Cash Payments over \$10,000 Received in a Trade or Business, FinCEN Form 8300, corresponding to the receipt in or about January 2013 of more than \$10,000 U.S. currency related to a single sale, to wit, the representation of Omar Pinales AKA: Botas, as required by Title 31, United States Code, Section 5331, and the regulations promulgated thereunder.

In violation of Title 31, United States Code, Sections 5331 and 5322.

COUNT NINE

From in or about July, 2016 through on or about the date of the Indictment, in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

did corruptly, by threat, and by any threatening communication, influence, obstruct, impede and endeavored to corruptly influence, obstruct, and impede the due administration of justice in the United States of America v. Guillermo Vega, Jr., 1:15-CR-1012-S1, in that the defendant knew there was a pending judicial proceeding in the United States District Court for the Southern District of Texas, by falsely accusing and attempting to falsely accuse a material witness, Maria Amaro, who would testify in the prosecution of the defendant in United States of America v. Guillermo Vega, Jr., 1:15-CR-1012-S1, by alleging that the witness had committed the criminal offense of forgery, in which no such crime had been committed and by

attempting to have said witness arrested prior to her testimony in the pending trial of the defendant.

In violation of Title 18 United States Code 1503 and 1503(a).

COUNT TEN

From in or about July, 2016 through on or about the date of the Indictment, in the Southern District of Texas and within the jurisdiction of the Court, the defendant,

GUILLERMO VEGA, JR.

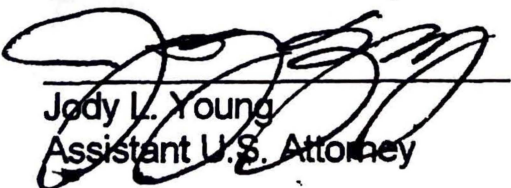
did knowingly engage in misleading conduct toward Maria Amaro by falsely accusing and attempting to falsely accuse Maria Amaro of the criminal offense of forgery, with the intent to influence, delay, and prevent the testimony of Maria Amaro in an official proceeding, in the United States of America v. Guillermo Vega, Jr., 1:15-CR-1012-S1.

In violation of Title 18 United States Code 1512(b)(1).

A True Bill:

Foreperson of the Grand Jury

Kenneth Magidson
United States Attorney



Jody L. Young
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA

§

vs.

§

CRIMINAL NO. B-15-1012-S2

GUILLERMO VEGA, JR.

§

PLEA AGREEMENT

COMES NOW the United States of America, by and through its attorneys RYAN K. PATRICK, United States Attorney for the Southern District of Texas, and the undersigned Assistant United States Attorney, and the defendant, **GUILLERMO VEGA, JR.**, and the defendant's counsel, pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, and state that they have entered into an agreement, the terms and conditions of which are as follows:

1. The defendant agrees to plead guilty to Count 7 of the indictment. Count 7 of the indictment charges the defendant with Failure to file a Report of Cash Payments over \$10,000 received in a Trade or Business, in violation of Title 31, United States Code, Sections 5331 and 5322. The defendant, by entering this plea, agrees that he/she is waiving any right to have the facts that the law makes essential to the punishment either charged in the indictment, or proved to a jury or proven beyond a reasonable doubt.

2. As part of this agreement, the United States agrees to recommend the Defendant be given full credit for acceptance of responsibility, be sentenced to the bottom of the advisory guidelines, that the tax loss in the case for restitution purposes is no more than the amount of \$126,253.00 listed in Count 1. The defendant agrees to make full restitution of the tax loss. The Government shall dismiss all remaining counts at the time

Revised October 2017



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ATTEST
DAVID J. BRADLEY, Clerk of Court
By Edna Pence
Deputy Clerk

of sentencing.

3. The penalty for a violation of Title 31, United States Code, Sections 5331 and 5322, includes a maximum term of ten (10) years imprisonment, a fine up to \$500,000.00, and a period of supervised release of no more three (3) years. The defendant also acknowledges and understands that if (s)he should violate the conditions of any period of supervised release which may be imposed as part of his sentence, then the Defendant may be imprisoned for the entire term of supervised release without credit for time already served on the term of supervised release prior to such violation. The defendant is not eligible for parole for any sentence imposed. The Defendant is eligible for probation should the Court depart downward. The Government agrees that the Defendant may request a downward departure at the time of sentencing.

4. The defendant will pay to the United States District Clerk a special assessment in the amount of one-hundred dollars (\$100.00) per count of conviction, as required in Title 18, United States Code, Section 3013(a)(2)(A). The payment will be by certified check payable to United States District Clerk, Brownsville, Texas 78520.

5. The defendant understands that under the Sentencing Guidelines, the Court is permitted to order the defendant to pay a fine that is sufficient to reimburse the government for the costs of any imprisonment or term of supervised release, if any is ordered.

6. The defendant agrees that any fine or restitution imposed by the Court will be due and payable on terms determined by the Court. The defendant will not attempt to avoid or delay payment.

7. Defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500) prior to sentencing if he/she is requested to do so. In the event that the Court imposes a fine or orders the payment of restitution as part of the Defendant's sentence, the Defendant shall make complete financial disclosure by truthfully executing a sworn financial statement immediately following his/her sentencing.

8. Defendant agrees to pay Title 26 interest on the restitution amount; interest runs from the last date prescribed for payment of the relevant tax liability until the IRS receives payment in full.

9. Notwithstanding the requirement to pay restitution, nothing in this agreement shall preclude or otherwise limit the right of the I.R.S. to assess and collect taxes due from the defendant. This plea disposes of the Defendant's criminal liability for the time period within the indictment regarding the charges (Tax evasion and FinCEN Form 8300 violations) in this case. Defendant has no additional taxes due for the 2011 tax year, which is the time period within the indictment that he is charged with tax-related offenses.

10. Defendant recognizes that pleading guilty may have consequences with respect to his/her immigration status. Defendant understands that if he/she is not a citizen of the United States, by pleading guilty he/she may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant understands that if he/she is a naturalized United States citizen, pleading guilty may result in immigration consequences, such as denaturalization and potential deportation or removal from the United States. Defendant's attorney has advised Defendant of the potential immigration consequences resulting from Defendant's plea of

guilty and Defendant affirms that he/she wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction.

11. The parties understand this agreement carries the potential for a motion for departure under Section 5K1.1 of the Sentence Guidelines. The defendant understands and agrees that whether such a motion is filed will be determined solely by the United States through the United States Attorney for the Southern District of Texas. Should the defendant's cooperation, in the sole judgment and discretion of the United States, amount to "substantial assistance", the United States reserves the sole right to file a motion for departure pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statement. The defendant further agrees to persist in that plea through sentencing, fully cooperate with the United States, and not oppose the forfeiture of assets contemplated in this agreement. The defendant understands and agrees that the United States will request that sentencing be deferred until that cooperation is complete.

12. The defendant understands and agrees that "fully cooperate" as used herein, includes providing all information relating to any criminal activity known to defendant, including but not limited to the specific facts of the present offense. The defendant understands that such information includes both state and federal offenses arising therefrom. In that regard:

- (a) Defendant agrees that this plea agreement binds only the United States Attorney for the Southern District of Texas and defendant; it does not bind any other United States Attorney or any other unit of the Department of Justice;
- (b) Defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States. Defendant further agrees to waive his/her Fifth Amendment privilege against self-incrimination for the purpose of this agreement;

- (c) Defendant agrees to voluntarily attend any interviews and conferences as the United States may request;
- (d) Defendant agrees to provide truthful, complete and accurate information and testimony and understands any false statements made by the defendant to the Grand Jury or at any court proceeding (criminal or civil), or to a government agent or attorney can and will be prosecuted under the appropriate perjury, false statement or obstruction statutes;
- (e) Defendant agrees to provide to the United States all documents in his/her possession or under his/her control relating to all areas of inquiry and investigation.
- (f) Should the recommended departure, if any, not meet the defendant's expectations, the defendant understands he remains bound by the terms of this agreement and cannot, for that reason alone, withdraw his/her plea.

13. Defendant is aware that Title 18, United States Code, § 3742, affords a defendant the right to appeal the conviction and sentence imposed. The defendant knowingly and voluntarily waives the right to appeal the conviction and the sentence imposed, or the manner in which the sentence was determined. Additionally, the defendant is aware that Title 28, United States Code, § 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the conviction or sentence has become final. The defendant knowingly and voluntarily waives the right to contest his/her conviction or sentence by means of any post-conviction proceeding. If the defendant files a notice of appeal following the imposition of sentence, the government will seek specific performance of this provision. Nothing in the foregoing waiver of appellate and collateral review of rights shall preclude the defendant from raising a claim of ineffective assistance of counsel in an appropriate forum. In exchange for the Agreement with the United States, Defendant waives all defenses based on venue, speedy trial under the Constitution and

Speedy Trial Act, and the statute of limitations with respect to any prosecution that is not time barred on the date that this Agreement is signed, in the event that (a) Defendant's conviction is later vacated for any reason, (b) Defendant violates any provision of this Agreement, or (c) Defendant's plea is later withdrawn.

14. In agreeing to these waivers, defendant is aware that a sentence has not yet been determined by the Court. The defendant is also aware that any estimate of the possible sentencing range under the sentencing guidelines that he/she may have received from his/her counsel, the United States or the Probation Office, is a prediction, not a promise, did not induce his/her guilty plea, and is not binding on the United States, the Probation Office or the Court. The United States does not make any promise or representation concerning what sentence the defendant will receive. Defendant further understands and agrees that the United States Sentencing Guidelines are "effectively advisory" to the Court. *United States v. Booker*, 125 S.Ct. 738 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated guideline range.

15. The Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in paragraph 2 of this plea agreement.

16. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with defendant's counsel and the Probation Office; and,
- (d) to file a pleading relating to these issues, in accordance with U.S.S.G. Section 6A1.2 and Title 18, U.S.C. § 3553(a).

17. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, as well as the provisions of Title 18, U.S.C. § 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw a guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement.

18. Defendant understands that by entering into this agreement, he/she surrenders certain rights as provided in this plea agreement. Defendant understands that the rights of a defendant include the following:

- (a) If defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial

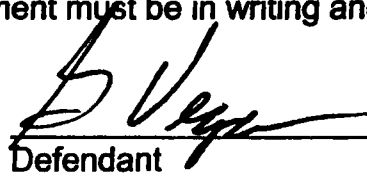
may be conducted by a judge sitting without a jury if the defendant, the United States, and the court all agree.

- (b) At a trial, the United States would be required to present witnesses and other evidence against the defendant. Defendant would have the opportunity to confront those witnesses and his/her attorney would be allowed to cross-examine them. In turn, the defendant could, but would not be required to present witnesses and other evidence on his/her own behalf. If the witnesses for defendant would not appear voluntarily, he/she could require their attendance through the subpoena power of the court.
- (c) At a trial, defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if the defendant desired to do so, he/she could testify on his/her own behalf.

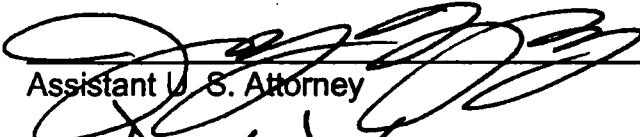
19. If defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and the defendant's plea and sentence will stand. If at any time defendant retains, conceals or disposes of assets in violation of this plea agreement, or if defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by defendant, whether prior to or subsequent to this plea agreement, and all leads derived therefrom, will be used against defendant in any prosecution.

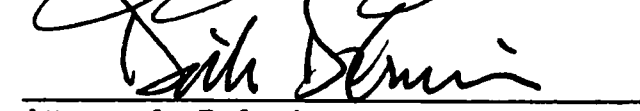
20. This written plea agreement, consisting of ten pages, including the attached certifications of defendant and his/her attorney, constitutes the complete plea agreement between the United States, defendant and his/her counsel. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against him/her and that he/she is pleading guilty freely and voluntarily because he/she is guilty.

21. Any modification of this plea agreement must be in writing and signed by all parties.


Defendant

APPROVED:


Assistant U. S. Attorney


Attorney for Defendant

CERTIFICATION BY THE DEFENDANT

I have consulted with my counsel and fully understand all my rights with respect to the charge(s) pending against me. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.


Defendant

5/23/18
Date

CERTIFICATION BY ATTORNEY

I have fully explained to the defendant, his rights with respect to the pending indictment/information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.


Counsel for Defendant

5/23/18
Date

PLEA PACKET MEMO

ASSIGNED AUSA: Jody L. Young

DEFENDANT: Guillermo Vega, Jr.

CASE# B-15-1012-S2

RECOMMENDATION IN EXCHANGE FOR DEFENDANT'S PLEA TO COUNT SEVEN AND WAIVER OF CERTAIN APPELLATE RIGHTS: ACCEPTANCE OF RESPONSIBILITY, LOW END OF THE ADVISORY GUIDELINES, AND DISMISSAL OF REMAINING COUNTS AT TIME OF SENTENCING.

FACT SUMMARY SHEET

On March 21, 2011, in Brownsville, Texas, the defendant, GUILLERMO VEGA, JR. received \$25,000 in cash related to a single sale while operating as a trade or business, namely the Law Office of Guillermo Vega, Jr., to represent Heriberto Bazan on federal charges of attempting to transport ammunition into Mexico. The defendant did not file a FinCEN Form 8300 to declare the receipt of cash of more than \$10,000 being received by his trade or business. The defendant knew that he had to file a FinCEN Form 8300 upon receipt of the \$25,000. The parties agree that the total relevant conduct and/or value of the funds regarding FinCEN Form 8300s involved in this prosecution is \$25,000.

The parties also agree that in exchange for this agreement, the defendant will make full restitution on the tax loss identified in Count 1 of the indictment. The tax loss, before applicable interest and possible penalties, is \$126,253.00. The defendant agrees to make full restitution of the total tax loss, interest, and penalties by time of sentencing.

I agree the above factual summary accurately represents my involvement in the crime to which I am pleading guilty and that the abbreviated proposed plea agreement accurately describes my plea agreement with the government. A complete written plea agreement may be attached.


Defendant


Assistant United States Attorney


Counsel for Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
Holding Session in Brownsville**ENTERED**

October 24, 2019

David J. Bradley, Clerk

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

v.

GUILLERMO VEGA, JR.**CASE NUMBER: 1:15CR01012-S2-001****USM NUMBER: 99832-379**Dick DeGuerin and Charles Thomas Flood

Defendant's Attorney

THE DEFENDANT:☒ pleaded guilty to count(s) 7ss on May 23, 2018.☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
31 U.S.C. §§ 5331 and 5322	Failing to File a Report of Cash Payment Over \$10,000.00 (FinCEN Form 8300) Received in a Trade or Business	11/16/2015	7ss

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☒ Count(s) 1-7; 1s-8s; 1ss-6ss; and 8ss-10ss are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

October 16, 2019

Date of Imposition of Judgment



Signature of Judge

ANDREW S. HANEN**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

October 24, 2019

Date

EXHIBIT**5**

TRUE COPY I CERTIFY
ATTEST:
DAVID J. BRADLEY Clerk of Court
 By Edmundo Ponce
 Deputy Clerk

DEFENDANT: **GUILLERMO VEGA, JR.**
CASE NUMBER: **1:15CR01012-S2-001**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: 13 months.

- ☐ See Additional Imprisonment Terms.
- ☒ The court makes the following recommendations to the Bureau of Prisons:
Designation to a facility that will ensure the defendant's safety and security
Placement in a mental health treatment program
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ on _____
☐ as notified by the United States Marshal.
- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ before 2 p.m. on _____
☒ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: **GUILLERMO VEGA, JR.**
CASE NUMBER: **1:15CR01012-S2-001**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 3 years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- ☒ See Special Conditions of Supervision.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: **GUILLERMO VEGA, JR.**CASE NUMBER: **1:15CR01012-S2-001****SPECIAL CONDITIONS OF SUPERVISION**

You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office.

You must not incur new credit charges or open additional lines of credit without the approval of the probation officer.

You are to file all pending Federal Income Tax returns immediately and comply with all filing tax requirements during the term of supervised release and pay all taxes currently owed, if any.

DEFENDANT: **GUILLERMO VEGA, JR.**
CASE NUMBER: **1:15CR01012-S2-001**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$100,000.00	\$126,253.00

- ☐ See Additional Terms for Criminal Monetary Penalties.
- ☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- ☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
IRS-RACS Attn: Mail Stop 6261, Restitution 333 Pershing Avenue Kansas City, MO 64108		\$126,253.00	100%

- ☐ See Additional Restitution Payees.

TOTALS \$126,253.00

- ☒ Restitution amount ordered pursuant to plea agreement \$126,253.00
- ☒ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:
- ☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **GUILLERMO VEGA, JR.**
CASE NUMBER: **1:15CR01012-S2-001**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$226,353.00 due immediately, balance due
☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ installments of \$ _____ over a period of _____, to commence _____ after the date of this judgment; or
- D ☐ Payment in equal _____ installments of \$ _____ over a period of _____, to commence _____ after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court
Attn: Finance
600 E. Harrison Street #101
Brownsville, TX 78520-7114

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number

Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

☐ See Additional Defendants and Co-Defendants Held Joint and Several.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

AFFIDAVIT

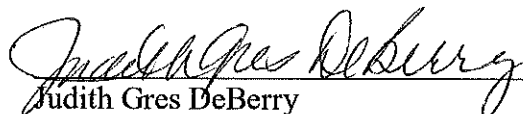
THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Judith Gres DeBerry, Petitioner's attorney of record, who, being by me duly sworn, deposed as follows:

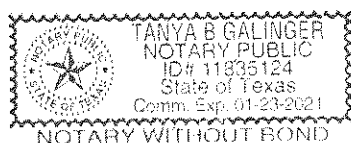
"My name is Judith Gres DeBerry. I am over the age of 18 years, of sound mind, capable of making this affidavit, and state the following:

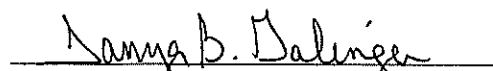
Based upon information and belief, Guillermo Vega, Jr., whose Texas Bar Card Number is 20533700, is licensed as an attorney and counselor at law in the State of Texas. Based upon information and belief Guillermo Vega, Jr., named as Respondent in the Petition for Compulsory Discipline filed with the Board of Disciplinary Appeals is one and the same person as the Guillermo Vega, Jr. who is the subject of the Judgment in a Criminal Case entered in Cause No. 1:15-CR-01012-S2-001, styled *United States of America v. Guillermo Vega, Jr.*, in the United State District Court, Southern District of Texas, Brownsville Division, wherein Respondent was found guilty of count(s) 7ss on May 23, 2018, Title 31 U.S.C. Section 5331 and 5332, Failing to File a Report of Cash Payment Over \$10,000 (FinCEN Form 8300) Received in a Trade or Business and was sentenced to thirteen (13) months in the Federal Bureau of Prisons."

FURTHER Affiant saith not.


Judith Gres DeBerry

SWORN AND SUBSCRIBED before me on the 15th day of May 2020.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS



INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

Rule 1.02. General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 [17.01] applies to the enforcement of a judgment of BODA.

Rule 1.03. Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04. Appointment of Panels

- (a) BODA may consider any matter or motion by panel,

except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

- (b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05. Filing of Pleadings, Motions, and Other Papers

- (a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

- (1) Email Address. The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

- (2) Timely Filing. Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

- (3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

- (4) Exceptions.

- (i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

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

- a) documents that are filed under seal or subject to a pending motion to seal; and
- b) documents to which access is otherwise restricted by court order.

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

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

- (i) be in text-searchable portable document format (PDF);
- (ii) be directly converted to PDF rather than scanned, if possible; and
- (iii) not be locked.

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

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

- (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
- (2) an electronic image or scanned image of the signature.

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

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

Rule 1.06. Service of Petition

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

Rule 1.07. Hearing Setting and Notice

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

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the

request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

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

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

Rule 1.08. Time to Answer

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

Rule 1.09. Pretrial Procedure

(a) Motions.

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

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

- (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (ii) if an appeal has been perfected, the date when the appeal was perfected;
- (iii) the original deadline for filing the item in question;
- (iv) the length of time requested for the extension;
- (v) the number of extensions of time that have been granted previously regarding the item in question; and

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

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

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

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

- (1) marked;
- (2) indexed with the title or description of the item offered as an exhibit; and
- (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

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

Rule 1.10. Decisions

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

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

- (1) as required by the TRDP; and
- (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

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

Rule 1.11. Board of Disciplinary Appeals Opinions

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

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in

the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

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

Rule 1.12. BODA Work Product and Drafts

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

Rule 1.13. Record Retention

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

Rule 1.14. Costs of Reproduction of Records

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

Rule 1.15. Publication of These Rules

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

II. ETHICAL CONSIDERATIONS

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

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

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

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02. Confidentiality

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

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

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

Rule 2.03. Disqualification and Recusal of BODA Members

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

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

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

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02. Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and

all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

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

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

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

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

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

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

Rule 4.02. Record on Appeal

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

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

(c) Responsibility for Filing Record.

(1) Clerk's Record.

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

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

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

(2) Reporter's Record.

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

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

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

(d) Preparation of Clerk's Record.

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

- (i) gather the documents designated by the parties'

written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

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

(vii) certify the clerk's record.

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

(3) The table of contents must:

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

(ii) be double-spaced;

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

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

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

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

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

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

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

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

(f) Preparation of the Reporter's Record.

(1) The appellant, at or before the time prescribed for

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

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

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

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

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

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

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

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

¹ So in original.

Rule 4.03. Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless

a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

(b) If No Record Filed.

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

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

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

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

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

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

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

Rule 4.04. Copies of the Record

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

Rule 4.05. Requisites of Briefs

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

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

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

(c) Contents. Briefs must contain:

- (1) a complete list of the names and addresses of all parties to the final decision and their counsel;
- (2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;
- (3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;
- (4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;
- (5) a statement, without argument, of the basis of BODA's jurisdiction;
- (6) a statement of the issues presented for review or points of error on which the appeal is predicated;
- (7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;
- (8) the argument and authorities;
- (9) conclusion and prayer for relief;
- (10) a certificate of service; and
- (11) an appendix of record excerpts pertinent to the issues presented for review.

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

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

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

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

- (1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's

failure to timely file a brief;

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

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

Rule 4.06. Oral Argument

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

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

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

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

Rule 4.07. Decision and Judgment

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

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

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

Rule 4.08. Appointment of Statewide Grievance Committee

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

Rule 4.09. Involuntary Dismissal

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

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

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

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

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

Rule 5.02. Hearing

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

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

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

Rule 6.02. Interlocutory Suspension

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

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

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

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

- (i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or
- (ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

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

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

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

Rule 7.02. Order to Show Cause

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

Rule 7.03. Attorney's Response

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

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

Rule 8.02. Petition and Answer

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

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

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

Rule 8.03. Discovery

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

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

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

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

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

Rule 8.04. Ability to Compel Attendance

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

Rule 8.05. Respondent's Right to Counsel

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

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

Rule 8.06. Hearing

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

Rule 8.07. Notice of Decision

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

Rule 8.08. Confidentiality

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

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

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

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension

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

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

Rule 9.02. Discovery

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

Rule 9.03. Physical or Mental Examinations

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

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

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

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

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

Rule 9.04. Judgment

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

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

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

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

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