



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

IN THE MATTER OF §
DAVID LUTHER WOODWARD § **CAUSE NO. 67040**
STATE BAR CARD NO. 21975640 §

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called “Petitioner”), brings this action against Respondent, David Luther Woodward, (hereinafter called “Respondent”), showing as follows:

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

2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at David Luther Woodward, 1415 Lemhurst Road, Pensacola, Florida 32507.

3. On or about December 18, 2021, a Complaint (Exhibit 1) was filed with the Supreme Court of Florida in a matter styled, *The Florida Bar, Complainant, v. David Luther Woodward, Respondent*, Supreme Court Case No. SC-, The Florida Bar File No. 2020-00,23(1A), that states in pertinent part:

. . .44. By way of the foregoing, respondent has violated the following Rules Regulating the Florida Bar, namely, 4-1.3(Diligence), 4-1.4(Communication), 4.1.5(Fees for Legal Services), 4-1.16(d)(Protect

Client's Interests), 4-3.2(Expedite Litigation), 4-3.4(c)(Knowingly disobey an obligation under the rules of a tribunal), 4-8.4(d)(Conduct Prejudicial to the Administration of Justice) and 4-8.4(g)(Failure to Respond to The Florida Bar). . .

4. On or about January 22, 2021, an Answer (Exhibit 2) was filed with the Supreme Court of Florida in a matter styled, *The Florida Bar, Complainant, v. David Luther Woodward, Respondent*, Supreme Court Case No. SC20-1842, The Florida Bar File No. 2020-00,232 (1A).

5. On or about January 12, 2022, a Report of Referee (Exhibit 3) was filed with the Supreme Court of Florida in a matter styled, *The Florida Bar, Complainant, v. David Luther Woodward, Respondent*, Supreme Court Case No. SC20-1842, The Florida Bar File No. 2020-00,232 (1A), that states in pertinent part:

...Based on Respondent's Stipulation to having violated the Rules charged in the Florida Bar's complaint, I recommend that Respondent be found guilty of violating the following Rules Regulating the Florida Bar:

4-1.3(Diligence), 4-1.4(Communication), 4-3.2(Expediting Litigation), 4-3.4(c)(Knowingly disobey an obligation under the rules of a tribunal), 4-8.4(d)(Conduct Prejudicial to the Administration of Justice) and 4-8.4(g)(Failure to Respond to The Florida Bar). . .

6. On or about April 14, 2022, an Order (Exhibit 4) was entered by the Supreme Court of Florida in a matter styled, *The Florida Bar, Complainant, v. David Luther Woodward, Respondent*, Supreme Court Case No. SC20-1842, The Florida Bar File No. 2020-00,232 (1A), that states in pertinent part as follows:

. . . The uncontested report of the referee is approved and respondent is suspended from the practice of law for seventy-five days, effective thirty days from the date of this order . . . Respondent shall fully comply with Rule Regulating the Florida Bar 3-5.1(h). Respondent shall also fully comply with Rule Regulating the Florida Bar 3-6.1, if applicable. In addition, respondent shall accept no new business from the date this order is filed until he is reinstated. Respondent is further directed to comply with all other terms and conditions of the report.

Upon reinstatement, respondent is further placed on probation for two years under the terms and conditions set forth in the report . . .

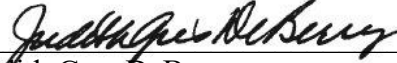
7. Copies of the Complaint, Answer, Report of Referee, and Supreme Court Order, are attached hereto as Petitioner's Exhibits 1 through 4, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 through 4 at the time of hearing of this cause.

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

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
Austin, Texas 78711
Telephone: 512.427.1350
Telecopier: 512.427.4167
Email: jdeberry@texasbar.com



Judith Gres DeBerry
Bar Card No. 24040780

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

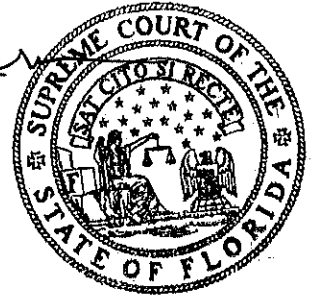
I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on David Luther Woodward, by personal service.

David Luther Woodward
1415 Lemhurst Road
Pensacola, Florida 32507-3538



Judith Gres DeBerry

A True Copy
Attest:
John A. Tomasino, Clerk
Supreme Court of Florida
By *[Signature]*
Deputy Clerk



IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

Supreme Court Case
No. SC-

v.

The Florida Bar File
No. 2020-00,23(1A)

DAVID LUTHER WOODWARD,

Respondent.

_____ /

COMPLAINT

The Florida Bar, complainant, files this Complaint against David Luther Woodward, respondent, pursuant to the Rules Regulating The Florida Bar and alleges:

1. Respondent is and was, at all times mentioned herein, a member of The Florida Bar admitted on November 10, 1969, and is subject to the jurisdiction of the Supreme Court of Florida.
2. Respondent resided and practiced law in Escambia County, Florida, at all times material to this complaint.
3. The First Judicial Circuit Grievance Committee "A" found probable cause to file this complaint pursuant to R. Regulating Fla. Bar 3-7.4, and this complaint has been approved by the presiding member of that committee.

RECEIVED, 12/18/2020 08:09:52 AM, Clerk, Supreme Court



4. On or about November 18, 2019, the Rev. Dr. Barbara Simmons (“Dr. Simmons”), a retired pastor from Massachusetts, filed a Florida Bar complaint against respondent for failing to pursue a legal case initially filed by her and her six siblings.

5. In 2016, Dr. Simmons’ mother died and left her home in Pensacola, Florida, in equal shares to her 8 children. The names of all the children were in her will and on the deeds.

6. Dwayne Simmons, one of the siblings, refused to move out of the house after residing rent-free for 3 years in his mother’s home.

7. The remainder of the siblings, including Dr. Simmons, filed a petition for partition *pro se* on May 25, 2018, because they wanted their brother out of the house so they could sell it.

8. The court case proceeded until March 28, 2019, when, at a court hearing, the judge suggested that the plaintiffs needed a lawyer because he could not give them legal advice.

9. On that date, the court set the final hearing date for trial on July 18, 2019.

10. Dr. Simmons and her siblings decided to hire respondent to represent them on their petition for partition and paid him an initial retainer of \$750.00 on April 10, 2019, and an additional \$500.00 on August 7, 2019.

11. Respondent had no written fee agreement with Dr. Simmons or her siblings.

12. On April 9, 2019, respondent filed a notice of appearance in the petition for partition and motion to amend complaint which was granted by the court on May 8, 2019.

13. The court held a hearing on June 21, 2019, granting respondent's motion for case management conference and to reschedule trial, setting a new trial date for September 25, 2019.

14. Respondent failed to notify his clients of the new trial date.

15. After their initial consultation, respondent failed to reply to the clients' phone calls or inquiries about their legal case.

16. On September 25, 2019, neither respondent nor any of his clients appeared at the final trial.

17. The judge's judicial assistant called respondent to find out his whereabouts and inquired if he was going to appear at the trial.

18. Respondent represented to the judicial assistant that he intentionally did not appear because opposing counsel would not comply with discovery requests or the order for mediation.

19. On that same date, the circuit court judge issued an Order to Show Cause ("OSC"), returnable September 27, 2019, requiring respondent to "show

cause why the case should not be dismissed without prejudice and why he should not be assessed for reasonable attorney's fees incurred by defense counsel as a sanction for failing to appear at trial" and ordering respondent to furnish a copy of the OSC to his clients.

20. Respondent failed to respond to the circuit court's OSC and did not provide his clients with a copy of the OSC as required by the court order.

21. On October 4, 2019, the circuit court judge issued a second OSC ("OSC 2") returnable October 11, 2019, giving respondent a final opportunity to appear in court and explain his failure to appear at trial, why attorney's fees should not be imposed as a sanction, and required respondent to provide a copy to his clients.

22. Respondent did not provide any written response to the court as to OSC-2, did not notify his clients of OSC-2 but advised that he would explain his position orally to the court.

23. On October 10, 2019, the court allowed respondent to appear in person so he could explain orally to the court the reasons for his nonappearance at the final trial and his noncompliance with the court's two Orders to Show Cause

24. At the OSC hearing, when asked by the court about his failure to appear at the final trial, respondent represented to the court that he missed the final trial date because he did not properly calendar the date.

25. When questioned by the court if he had provided the two Orders to Show Cause to his clients, he avoided the question stating as an excuse that, even if he did not notify his clients, the Clerk would send them to the clients because they were originally *pro se*, which the court viewed as inaccurate.

26. On October 11, 2019, after considering respondent's conflicting responses, the court found:

Mr. Woodward's comment that this case is ripe for summary judgment is off point. It does not explain his willful failure to appear at trial. It does not explain his failure to respond with the first order to show cause. It does not explain his failure to comply with either order to show cause to alert his clients that his decision not to participate in the trial might result in the case being dismissed. And while this Court has concern regarding the impact of the Plaintiffs based on the actions or inactions of their counsel, this Court is attuned to the speedy, just and inexpensive disposition of actions and the expense as it relates to the Defendant and his counsel.

27. Consequently, the court issued an Order Dismissing Without Prejudice the plaintiffs' case, granting the defendant's motion to dismiss and defendant's attorney fees pending the filing of an affidavit by defendant's counsel, and had the Order Dismissing Without Prejudice along with the two prior Orders to Show Cause sent to the plaintiffs.

28. Dr. Simmons and her siblings then hired another attorney who needed to refile the petition for partition and begin the case over again.

29. On November 15, 2019, The Florida Bar sent respondent a 15-day letter that respondent failed to answer.

30. On January 8, 2020, The Florida Bar sent a reminder letter to respondent to answer Ms. Simmons' complaint via his record bar email address and a letter to 2 addresses.

31. Respondent sent an email advising that he was very busy but would respond.

32. On April 8, 2020, respondent's case was referred to the grievance committee and a Notice of Assignment of Investigating Member was sent to respondent giving him 10 days to contact the Investigating Member.

33. When respondent failed to reply to the Notice of Assignment of Investigating Member, the Investigating Member made attempts to reach respondent, but to no avail.

34. In June 2020, the investigating member received a telephone call from respondent for the first time.

35. On July 11, 2020, respondent filed a written reply to The Florida Bar for the first time.

36. Respondent failed to diligently and promptly represent his clients after the June 21, 2019, court hearing on his motions.

37. Respondent failed to communicate with his clients after the initial consultation, failed to keep them informed on the status of their legal case, and failed to notify them of hearings, the final trial date and the court's orders to show cause.

38. Respondent charged a clearly excessive fee because he failed to provide the legal services for which he was hired by the clients.

39. Respondent failed to protect his clients' interests by returning his unearned fees.

40. Respondent failed to expedite the clients' litigation by not showing up for the final hearing and making excuses after the fact for his failure to appear on the final trial date. He also failed to file appropriate motions to obtain discovery and notify the court about mediation.

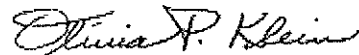
41. Respondent knowingly failed to respond to two orders to show cause issued by the circuit court judge in his clients' case and failed to notify his clients of one OSC in noncompliance with the court's order.

42. Respondent's conduct is prejudicial to the administration of justice by delaying the clients' case and requiring them to hire another attorney.

43. Respondent repeatedly failed to respond to The Florida Bar despite numerous attempts by The Florida Bar to get him to reply to their inquiries.

44. By way of the foregoing, respondent has violated the following Rules Regulating the Florida Bar, namely, 4-1.3(Diligence), 4-1.4(Communication), 4-1.5(Fees for Legal Services), 4-1.16(d) (Protect Client's Interests), 4-3.2 (Expedite Litigation), 4-3.4(c) (Knowingly disobey an obligation under the rules of a tribunal), 4-8.4(d)(Conduct Prejudicial to the Administration of Justice) and 4-8.4(g)(Failure to Respond to The Florida Bar).

WHEREFORE, The Florida Bar respectfully requests that respondent be appropriately disciplined in accordance with the provisions of the Rules Regulating The Florida Bar as amended.



Olivia Paiva Klein, Bar Counsel
The Florida Bar
Tallahassee Branch Office
651 East Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5845
Florida Bar No. 970247
oklein@floridabar.org



Patricia Ann Toro Savitz, Staff Counsel
The Florida Bar
651 E. Jefferson Street
Tallahassee, Florida 32399-2300
(850) 561-5839
Florida Bar No. 559547
psavitz@floridabar.org

CERTIFICATE OF SERVICE

I certify that this document has been furnished via the E-filing Portal to The Honorable John A. Tomasino, Clerk of the Supreme Court of Florida, to Respondent, David Luther Woodward, at dlw@woodlaw.pro; that a copy has been furnished by United States Mail via certified mail No. 7017 3380 0000 1082 7713 return receipt requested to David Luther Woodward, whose record bar address is 1415 Lemhurst Road/PO Box 4475, Pensacola, FL 32507-0475 and to Bar Counsel, Olivia Paiva Klein, The Florida Bar, at oklein@floridabar.org on this 18th day of December, 2020.



Patricia Ann Toro Savitz
Staff Counsel

**NOTICE OF TRIAL COUNSEL AND DESIGNATION OF PRIMARY
EMAIL ADDRESS**

PLEASE TAKE NOTICE that the trial counsel in this matter is Olivia Paiva Klein, Bar Counsel, whose address, telephone number and primary email address are The Florida Bar, Tallahassee Branch Office, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, (850) 561-5845 and oklein@floridabar.org. Respondent need not address pleadings, correspondence, etc. in this matter to anyone other than trial counsel and to Staff Counsel, Patricia Ann Toro Savitz, The Florida Bar, 651 E Jefferson Street, Tallahassee, Florida 32399-2300, at psavitz@floridabar.org.

MANDATORY ANSWER NOTICE

R. REGULATING FLA. BAR 3-7.6(h)(2) PROVIDES THAT A
RESPONDENT SHALL ANSWER A COMPLAINT.

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

Case No. SC20-1842

Lower Tribunal No.:
TFB File No. 2020-00,232
(1A)

DAVID LUTHER WOODWARD,

Respondent.

_____ /

ANSWER

Respondent, DAVID LUTHER WOODWARD, by and through the undersigned counsel, answers the Complaint in this matter:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.
8. Without knowledge. Respondent was not involved in the

partition case on March 28, 2019.



9. Without knowledge. Respondent was not involved in the partition case on March 28, 2019.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Denied.

15. Denied.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Denied.

26. Admitted.

27. Admitted.

28. Without knowledge.
29. Admitted.
30. Admitted.
31. Admitted.
32. Admitted.
33. Without knowledge, therefore denied.
34. Admitted.
35. Admitted.
36. Denied.
37. Denied.
38. Denied.
39. Denied.
40. Denied.
41. Denied.
42. Denied.
43. Denied.
44. Denied.

Respectfully submitted,

/S/ Richard A. Greenberg

Richard A. Greenberg

Florida Bar No. 0382371

E-mail: rgreenberg@rumberger.com (primary)

E-mail: docketingorlando@rumberger.com

rgreenbergsecy@rumberger.com (secondary)

RUMBERGER, KIRK & CALDWELL

Post Office Box 10507

Tallahassee, Florida 32302-2507

Telephone: (850) 222-6550

Telecopier: (850) 222-8783

Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by e-mail to the Honorable Dustin Stephenson, Referee, at causeyb@jud14.flcourts.org, Olivia Paiva Klein, Bar Counsel, at oklein@floridabar.org (primary e-mail) and DLee@flabar.org (secondary e-mail) and to Patricia Ann Toro Savitz, Staff Counsel, at psavitz@floridabar.org, this 22nd day of January, 2021.

/S/ Richard A. Greenberg

Richard A. Greenberg

Florida Bar No. 0382371

E-mail: rgreenberg@rumberger.com
(primary)

E-mail: docketingorlando@rumberger.com
greenbergsecy@rumberger.com (secondary)

RUMBERGER, KIRK & CALDWELL

A Professional Association

101 North Monroe Street, Suite 120

Post Office Box 10507

Tallahassee, Florida 32302-2507

Telephone: (850) 222-6550

Telecopier: (850) 222-8783

Attorneys for Respondent

A True Copy
Attest:
John A. Tomasino, Clerk
Supreme Court of Florida
By *[Signature]*
Deputy Clerk



IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

v.

DAVID LUTHER WOODWARD,

Respondent.

Supreme Court Case
No. SC20-1842

The Florida Bar File
No. 2020-00,232(1A)

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as Referee to conduct disciplinary proceedings herein according to R. Regulating Fla. Bar 3-7.6, the following proceedings occurred:

On December 18, 2020, the Florida Bar filed its Complaint against Respondent and on December 21, 2020, a Motion for Clarification of the case number with the Court. On December 22, 2020, the Chief Judge of the Fourteenth Judicial Circuit issued an Order Appointing a Referee. On January 5, 2021, Respondent improperly filed a Motion to Extend Time to Answer with the Supreme Court. On January 13, 2021, the Florida Bar filed a Motion to Strike Respondent's Motion. On January 14, 2021, Respondent's counsel filed a Notice of Appearance, an Unopposed Motion to Withdraw Respondent's Motion and a

Received, Clerk, Supreme Court

JAN 24 2022

Motion to Extend Time to Answer with the Referee. Respondent filed an Answer to the Florida Bar's Complaint on January 22, 2021, and a Waiver of Venue. The Referee scheduled a Case Management Conference on March 1, 2021, setting a Final Hearing on May 19, 2021. Pursuant to an Agreed Pretrial Order entered by the Referee, the Florida Bar propounded discovery on Respondent and the parties submitted Witness and Document Lists to the Referee on April 1, 2021.

On April 22, 2021, Respondent filed an Unopposed Motion to Continue the Final Hearing for the reasons set forth in the Motion, and the Referee entered an Order Rescheduling the Final Hearing until September 8, 2021. The Florida Bar filed a Motion for Extension of Time to File a Report of Referee that was granted by the Court on May 3, 2021. Respondent filed a Stipulation to the Factual Allegations and Rules in the Florida Bar's Complaint on August 26, 2021. The Referee held a Status Conference on August 30, 2021, where the Final Hearing was cancelled and a Final Sanction Hearing set for October 5, 2021.

Pursuant to the Referee's Order on the Status Conference dated September 3, 2021, the Florida Bar submitted its Witness List on September 23, 2021, and its Exhibit List on September 28, 2021. On September 23, 2021, Respondent submitted a List of Witnesses and Exhibits for the Final Sanction Hearing. On September 30, 2021, Respondent filed a Motion to Reschedule the Final Sanction

Hearing, and on the same date, the Referee held a Status Conference cancelling the Final Sanction Hearing on October 5, 2021.

The Florida Bar filed a second Motion for Extension of Time to File Report of Referee that was granted by the Court, up to, and including, December 17, 2021. The Referee set a Status Conference on October 20, 2021, and set the Final Sanction Hearing for December 6, 2021. The Florida Bar filed a Motion to Strike Expert Witness on December 2, 2021, that was denied by the Referee. On December 8, 2021, the Florida Bar filed a Motion for Extension of Time to File Report of Referee that was granted by the Court on December 9, 2021, giving the Referee until January 14, 2022, to file his Report.

All items properly filed including pleadings, exhibits in evidence and the report of referee constitute the record in this case and are forwarded to the Supreme Court of Florida.

II. FINDINGS OF FACT

Jurisdictional Statement. Respondent is, and at all times mentioned during this investigation was, a member of the Florida Bar, admitted on November 10, 1969, and subject to the jurisdiction and Rules Regulating the Florida Bar.

Narrative Summary Of Case. Based on Respondent's Stipulation to the Facts, I hereby make the followings findings of fact:

- A. On or about November 18, 2019, the Rev. Dr. Barbara Simmons ("Dr. Simmons"), a retired pastor from Massachusetts, filed a Florida Bar complaint against respondent for failing to pursue a legal case initially filed by her and her six siblings.
- B. In 2016, Dr. Simmons' mother died and left her home in Pensacola, Florida, in equal shares to her 8 children. The names of all the children were in her will and on the deeds.
- C. Dwayne Simmons, one of the siblings, refused to move out of the house after residing rent-free for 3 years in his mother's home.
- D. The remainder of the siblings, including Dr. Simmons, filed a petition for partition *pro se* on May 25, 2018, because they wanted their brother out of the house so they could sell it.
- E. The court case proceeded until March 28, 2019, when, at a court hearing, the judge suggested that the plaintiffs needed a lawyer because he could not give them legal advice.
- F. On that date, the court set the final hearing for on July 18, 2019.
- G. Dr. Simmons and her siblings decided to hire Respondent to represent them on their petition for partition and paid him a retainer of \$750.00 on April 10, 2019, and an additional \$500.00 on August 7, 2019.
- H. There was no written fee agreement between the parties.

- I. On April 9, 2019, Respondent filed a notice of appearance in the petition for partition and motion to amend complaint which was granted by the Court on May 8, 2019.
- J. The Court held a hearing on June 21, 2019, granting Respondent's motion for a case management conference and to reschedule trial, setting a new trial date for September 25, 2019.
- K. Respondent failed to notify his clients of the new trial date.
- L. After their initial consultation, Respondent failed to reply to the clients' phone calls or inquiries about their legal case.
- M. On September 25, 2019, neither Respondent nor any of his clients appeared in Court at the final trial.
- N. The judge's judicial assistant called Respondent to find out his whereabouts and inquired if he was going to appear at the trial.
- O. Respondent represented to the judicial assistant that he intentionally did not appear because opposing counsel would not comply with discovery requests or the order for mediation.
- P. On that same date, the circuit court judge issued an Order to Show Cause ("OSC"), returnable September 27, 2019, requiring Respondent to "show cause why the case should not be dismissed without prejudice and why he should not be assessed reasonable attorney's

fees incurred by defense counsel as a sanction for failing to appear at trial" and ordering Respondent to furnish a copy of the Order to Show Cause to his clients.

- Q. Respondent failed to respond to the Circuit Court's OSC and did not provide his clients with a copy of the OSC as required by the order.
- R. On October 4, 2019, the circuit judge issued a second OSC ("OSC 2") returnable October 11, 2019, giving Respondent a final opportunity to appear in court and explain his failure to appear at trial, why attorney's fees should not be imposed as a sanction, and required Respondent to provide a copy of OSC 2 to his clients.
- S. Respondent did not provide any written response to the Court as to OSC 2, did not notify his clients of OSC 2, but advised that he would explain his position orally to the Court.
- T. On October 10, 2019, the Court allowed Respondent to appear in person so he could explain orally to the Court the reasons for his nonappearance at the final hearing and his noncompliance with the Court's two Orders to Show Cause.
- U. At the OSC hearing, when asked by the Court about his failure to appear at the final hearing, Respondent represented to the Court that

he missed the final hearing trial date because he did not properly calendar the date.

- V. When questioned by the Court if he had provided the two Orders to Show Cause to his clients as ordered, he avoided the question stating as an excuse that, even if he did not notify his clients, the Clerk would send them to the clients because they were originally *pro se*, which the Court viewed as inaccurate.
- W. On October 11, 2019, after considering Respondent's conflicting responses, the court found:

Mr. Woodward's comment that this case is ripe for summary judgment is off point. It does not explain his willful failure to appear at trial. It does not explain his failure to respond with the first order to show cause. It does not explain his failure to comply with either order to show cause to alert his clients that his decision not to participate in the trial might result in the case being dismissed. And while this Court has concern regarding the impact of the Plaintiffs based on the actions or inactions of their counsel, this Court is attuned to the speedy, just and inexpensive disposition of actions and the expense as it relates to the Defendant and his counsel.

- X. Consequently, the Court issued an Order Dismissing Without Prejudice the Plaintiffs' case, granting the Defendant's motion to dismiss and Defendant's motion for attorney fees (pending the filing of an affidavit by Defendant's counsel), and had the Order Dismissing

Without Prejudice, along with the two prior Orders to Show Cause sent to the Plaintiffs.

- Y. Dr. Simmons and her siblings then hired another attorney who needed to refile the petition for partition and begin the case over again.
- Z. On November 15, 2019, the Florida Bar sent Respondent a 15-day letter that Respondent failed to answer.
- AA. On January 8, 2020, the Florida Bar sent a reminder letter to Respondent to answer Ms. Simmons' complaint via his record bar email address and a letter to two additional addresses.
- BB. Respondent sent an acknowledgment email advising that he was very busy, but would respond at a later time.
- CC. On April 8, 2020, Respondent's case was referred to the local grievance committee and a Notice of Assignment of Investigating Member was sent to Respondent, giving him ten days to contact the Investigating Member.
- DD. When Respondent failed to reply to the Notice of Assignment of Investigating Member, the Investigating Member made attempts to reach Respondent, but to no avail.
- EE. In June 2020, the Investigating Member received a telephone call from Respondent for the first time.

- FF. On July 11, 2020, Respondent filed a written reply to the Florida Bar for the first time.
- GG. Respondent failed to diligently and promptly represent his clients after the June 21, 2019, court hearing on his motions.
- HH. Respondent failed to communicate with his clients after the initial consultation, failed to keep them informed on the status of their legal case, and failed to notify them of hearings, the final trial date and the court's orders to show cause.
- II. Respondent failed to expedite the clients' litigation by not showing up for the final hearing and making excuses after the fact for his failure to appear on the final trial date. He also failed to file appropriate motions to obtain discovery and notify the court about mediation.
- JJ. Respondent knowingly failed to respond to two Orders to Show Cause issued by the circuit judge in his clients' case and failed to notify his clients of the two Orders to Show Cause in noncompliance with the Court's order.
- KK. Respondent's conduct is prejudicial to the administration of justice by delaying the clients' case and requiring them to hire another attorney.
- LL. Respondent repeatedly failed to respond to the Florida Bar despite numerous attempts by the Bar to obtain a reply to their inquiries.

III. RECOMMENDATIONS AS TO GUILT.

Based on Respondent's Stipulation to having violated the Rules charged in the Florida Bar's complaint, I recommend that Respondent be found guilty of violating the following Rules Regulating the Florida Bar:

4-1.3 (Diligence), 4-1.4 (Communication), 4-3.2 (Expediting Litigation)
4-3.4(c) (Knowingly disobey an obligation under the rules of a tribunal), 4-8.4(d) (Conduct Prejudicial to the Administration of Justice), and 4-8.4(g) (Failure to Respond to the Florida Bar).

Respondent will eliminate all indicia of respondent's status as an attorney on email, social media, telephone listings, stationery, checks, business cards, office signs or any other indicia whatsoever of respondent's status as an attorney during the suspension period.

IV. STANDARDS FOR IMPOSING LAWYER SANCTIONS

I considered the following Standards prior to recommending discipline:

1.1 STANDARDS FOR IMPOSING LAWYER SANCTIONS

The Board of Governors of The Florida Bar (the board) adopted an amended version of the ABA Standards for Imposing Lawyer Sanctions, providing a format for bar counsel, referees, and the Supreme Court of Florida (the court) to consider each of these questions before recommending or imposing appropriate discipline:

- (a) duties violated;
- (b) the lawyer's mental state;
- (c) the potential or actual injury caused by the lawyer's misconduct;
- (d) the existence of aggravating or mitigating circumstances.

The Florida Bar (the bar) will use these standards to determine discipline recommended to referees and the court and to determine acceptable pleas under the Rules Regulating The Florida Bar.

1.2 DEFINITIONS

- (a) “Injury” is harm to a client, the public, the legal system, or the profession which results from a lawyer’s misconduct. The level of injury can range from “serious” injury to “little or no” injury; a reference to “injury” alone indicates any level of injury greater than “little or no” injury.
- (b) “Intent” is the conscious objective or purpose to accomplish a particular result.
- (c) “Knowledge” is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.
- (d) “Negligence” is the failure of a lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard care that a reasonable lawyer would exercise in the situation.
- (e) “Potential injury” is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the lawyer’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer’s misconduct.

1.3 PURPOSE AND NATURE OF SANCTIONS

- (a) Purpose of Lawyer Disciplinary Proceedings. The purpose of lawyer disciplinary proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.
- (b) Public Nature of Lawyer Disciplinary Proceedings. Ultimate disposition of lawyer discipline is public.
- (c) Purpose of These Standards. These standards are designed for use in imposing a sanction or sanctions following a determination by clear and convincing evidence that a member of the legal profession has violated a provision of the Rules Regulating The Florida Bar. Descriptions in these standards of substantive disciplinary offenses are not intended to create grounds for determining culpability independent of those rules. The standards constitute a model, setting forth a comprehensive system for determining sanctions, permitting flexibility and creativity in assigning sanctions in particular cases of lawyer misconduct. They are designed to promote:
 - (1) consideration of all factors relevant to imposing the appropriate level of sanctions in an individual case;

- (2) consideration of the appropriate weight of these factors in light of the stated goals of lawyer discipline; and
- (3) consistency in the imposition of disciplinary sanctions for the same or similar offenses.

2.3 SUSPENSION

Suspension is the removal of a lawyer from the practice of law for a specified minimum period of time. A suspension of 90 days or less does not require proof of rehabilitation. A suspension of more than 90 days requires proof of rehabilitation and may require passage of all or part of the bar examination. No suspension is ordered for a specific period of time in excess of 3 years.

2.8 OTHER SANCTIONS AND REMEDIES

Other sanctions and remedies which may be imposed include:

- (a) restitution;
- (b) assessment of costs;
- (c) limitation on practice;
- (d) appointment of a receiver under chapter 5 of The Rules Regulating The Florida Bar;
- (e) requirement that the lawyer take the bar examination or Multistate Professional Responsibility Examination;
- (f) requirement that the lawyer attend continuing legal education courses;
- (g) evaluation or treatment for a substance-related disorder or personal and emotional problems; and
- (h) other requirements that the court deems consistent with the purposes of lawyer sanctions.

4.4 LACK OF DILIGENCE

Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving a failure to act with reasonable diligence and promptness in representing a client:

- (b) Suspension. Suspension is appropriate when a lawyer causes injury or potential injury to a client and:
 - (1) knowingly fails to perform services for a client; or
 - (2) engages in a pattern of neglect with respect to client matters.

6.2 ABUSE OF THE LEGAL PROCESS

Absent aggravating or mitigating circumstances, and on application of the factors to be considered in imposing sanctions, the following sanctions are generally appropriate in cases involving failure to expedite litigation or bring a meritorious claim, or failure to obey any obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists:

(b) Suspension. Suspension is appropriate when a lawyer knowingly violates a court order or rule and causes injury or potential injury to a client or a party or causes interference or potential interference with a legal proceeding.

V. CASE LAW

The Florida Bar presented case law on the three main issues in this case, namely, (1) neglect of client through respondent's lack of diligence and communication, (2) respondent's repeated failure to obey court orders and to appear for the scheduled final trial, resulting in an Order to Dismiss his clients' case without prejudice where the court found that respondent willfully failed to appear, and (3) failure to respond to the Florida Bar. I considered the following case law prior to recommending discipline:

- In The Florida Bar v. Pahules, 233 So.2d 130, 132 (Fla. 1970), it is a well-established maxim that a disciplinary sanction must serve three purposes: First, the judgment must be fair to society, both in terms of protecting the public from unethical conduct and at the same time not denying the public the services of a qualified lawyer as a result of undue harshness in imposing the penalty. Second, the judgment must be fair to the respondent, being sufficient to punish a breach of ethics and at the same time encourage reformation and rehabilitation. Third, the judgment must be severe enough to deter others who might be prone or tempted to become involved in like violations. See also, The Florida Bar v. Brake, 767 So.2d 1163, 1169 (Fla. 2000); The Florida Bar v. Lord, 433 So.2d 983, 986 (Fla. 1983).

- In TFB v. Polk 126 So.3d 240(2013), the attorney received a 90-day suspension and 3 years of probation for neglecting his client's postconviction appeal. The attorney failed to communicate with client and failed to return documents to the client despite numerous requests to do so. The attorney also failed to respond to the Florida Bar and misrepresented to the Referee during proceedings. The attorney had substantial mitigation including personal and emotional problems with alcoholism, severe depressive disorder, mental impairment and interim rehabilitation. He had no prior disciplinary history. The rules violated were: 4-1.3, 4-1.4, 4-1.16(d), and 4-8.4(g).
- In TFB v. Fortunato, 788 So.2d 201(Fla. 2001), the Court imposed a 90-day suspension for failure to respond to two related appellate court orders, resulting in the dismissal of the client's appeal and a sanction order being entered against Fortunato. She further made misrepresentations during the grievance proceedings. In aggravation, Fortunato had previously been publicly reprimanded. In mitigation, the Court accepted the referee's findings of the following factors: good character and reputation; remorseful and gave assurances that she would avoid further disciplinary proceedings; lack of dishonesty or selfish motive; she acknowledged the wrongful nature of her conduct; and she had personal or emotional problems at the time of the misconduct at issue. The rules violated were: 3-4.2, 3-4.3, 4-1.3, 4-3.4(c), and 4-8.4(a).
- In TFB v. Summers, 728 So.2d 739 (Fla. 1999), the Court imposed a 91-day suspension and attendance at Ethics School for failure to comply with orders of a federal judge, failure to respond to the Bar and failure to appear at final disciplinary hearing. Her only prior discipline was an administrative suspension plus 10 days thereafter for failing to comply with CLER. The rules violated were: 3-4.8, 4-1.1, 4-1.2, 4-1.3, 4-1.4, and 4-8.4(g).
- In The Florida Bar v. James M. Thomas, SC18-1391 [2018-10,134(06D)] -- By Court order dated December 1, 2020, the Court disapproved the referee's recommended discipline and instead suspended respondent for 1 year. The referee initially found respondent not guilty. Upon appeal, the Court approved the referee's finding of fact but disapproved his recommendation of no guilt as to Rules 4-1.1 and 4-1.3 and remanded the case back to the referee to determine the appropriate sanction. The referee submitted an Amended Report of Referee recommending a 45-day suspension. Neither party appealed but the Court issued an order to show cause why the referee's

recommended sanction should not be disapproved and a more severe sanction up to, and including, a 1-year suspension be imposed. The rules violated were: 4-1.1, and 4-1.3.

The Respondent in this case represented a client in a civil matter involving damage to the client's condominium. The court entered summary judgment as to liability in favor of the client and reserved ruling on the amount of damages and attorney's fees and cost. Thereafter, respondent failed to appear at two properly noticed pre-trial conferences. As a result of respondent's failure to appear, the court entered an order dismissing the client's case without prejudice. Respondent contended that his failure to appear at the pre-trial conference was excusable neglect, however the trial court found that his failure to appear at the two pre-trial conferences could not be explained as a mere calendaring error and was more than excusable neglect. The consequence of the dismissal resulted in the client going from the prevailing party where certain damages and attorney fees could be awarded, to recovering nothing and being required to pay \$30,563.10 in attorney's fees to the defendant. Respondent refiled a new case for the client but failed to pursue it.

- In TFB v. Picon, 205 So.3d 759 (Fla. 2016), the attorney appeared late for hearings, at a time not scheduled by the court, or not at all. The attorney failed to timely file a pretrial motion in one case and failed to schedule a hearing in another case. The attorney clearly had knowledge of the judge's order instructing her to file the motion and clearly knew when the hearing was scheduled having received court documents and emails about the time and date. The Referee cited the pattern of misconduct and impact on the attorney's clients, and imposed a 91-day suspension that was increased by the Court to one year. The rules violated were: 4-1.1, 4-1.3, 4-3.4(c) and 4-8.4(d).
- In TFB v. Gass, 153 So.3d 886 (Fla. 2014), the Court suspended the attorney for one year for failing to act with reasonable diligence, failing to adequately communicate with his client, and engaging in conduct prejudicial to the administration of justice. The attorney advised his clients not to attend a deposition in their civil case, repeatedly failed to inform them of the circuit court's orders to show cause and the show cause hearing, and did not attend the depositions and hearings on the client's behalf. Having failed to take any action when the circuit court issued capias and bench warrants for his clients, they were arrested and incarcerated. The attorney had one prior public reprimand in 2011. The Referee recommended a 60-day suspension

but, on appeal, the Court imposed one year suspension. The rules violated were: 4-1.3, 4-1.4 (a) (3) and (4), and 4-8.4(d).

- In TFB v. Grosso, 647 So.2d 840 (Fla. 1994), the Court held that failure to respond to investigative inquiry by the Florida Bar warrants a 10-day suspension. The attorney had unblemished record for 15 years. The rules violated 3-4.8, 4-8.4(g).
- In TFB v. Rosenberg, 169 So.3d 1155(Fla. 2015), the Florida Bar obtained a summary judgment and the Referee relied on TFB v. Bloom, 632 So.2d 1016(Fla. 1994) and imposed a 91-day suspension where the attorney, *inter alia*, failed to comply with discovery, failed to attend hearings and to comply with an order to show cause. The Court increased the discipline to one-year suspension. During the contract dispute case, the attorney failed to provide competent representation to a client, engaged in unethical conduct during discovery, and engaged in conduct prejudicial to the administration of justice. The attorney's misconduct led to 6 motions to compel and for sanctions, and an order to show cause by the trial court. The rules violated were: 4-1.1, 4-3.4(d), 4-8.4(d). Explaining the increased discipline, the Court cited to TFB v. Adler, 126 So.3d 244, 247 (Fla. 2013) stating the fact that the Court has moved toward imposing stronger sanctions for unethical and unprofessional conduct.

In this case, Mr. Woodward, the Respondent, has presented evidence of mitigation based on his claim of depression. The evidence of mitigation, however, is not sufficient to show that the attorney was so impaired to such an extent in 2019 at the time of the misconduct that it outweighs the misconduct. The Court has followed this principle in The Florida Bar v. Wolfe, 759 So. 2d 639 (Fla. 2000). In that case, the Court faced in-person solicitation of clients where homes damaged by tornadoes were offered contingency fee contracts by the attorney, which violated Bar rules on solicitation. The attorney offered mitigating evidence of a long-term addiction to cocaine. The Court, however imposed a one-year suspension, holding that, while a substance abuse problem may explain misconduct, it does not excuse it (Golub, 50 So. 2d 455(1989)) and the addiction must impair the attorney's ability to practice law to such an extent that it outweighs the attorney's conduct.

Similarly, in The Florida Bar v. Horowitz, 697 So. 2d 78 (Fla. 1997) where the attorney in three cases failed to perform work for which he was paid, with more than 20 rule violations, the attorney did not co-operate with disciplinary process,

and claimed that he was suffering from clinical depression when the misconduct occurred. The attorney testified that he was suffering from depression but the referee rejected this testimony as a mitigating factor because there was no evidence to show depression, he had priors and numerous aggravating factors. The Court imposed disbarment holding that evidence of Horowitz' clinical depression helps to explain, but not to excuse his pattern of neglect of clients and his failure to respond to communications from the Bar.

Respondent presented his own testimony at the Final Sanction Hearing along with one character witness, and the testimony of a psychiatrist who submitted a one- page report on Respondent's mental health. Although respondent is claiming depression and anxiety led to his failure to appear and comply with court orders in 2019, his psychiatrist states in his letter that he met with him for the first time on September 14, 2021. The psychiatrist stated in his letter that he relied on what Mr. Woodward told him, along with pharmacy records, to come to his conclusion that Respondent had suffered from this problem for several years. When Respondent testified, however, he stated that he believed that he had these problems from an early age. Yet, it was not until September 14, 2021, that the Respondent did anything about his purported mental health problems. He has been practicing law since 1969, and his character witness testified that he was an excellent lawyer with whom he worked on many cases. Apparently, his mental health problems did not prevent him from practicing law at a high level over the course of his fifty plus year legal career, nor does it present current problems since he also testified that he has at least six current clients, including a complex bankruptcy case in the Southern District of Florida.

To support his recommendation of a public reprimand, Respondent presented four unpublished decisions based on consent judgments with the Florida Bar. The Court has considered each of those cases submitted, however, in only one of those cases were the facts similar to the allegations in this case: The Florida Bar v. Jaminette de Jesus-Felicier. There, the Court imposed a public reprimand based on the facts contained in the consent judgment. The consent judgment was also based in part on three other unpublished consent judgments. Even in the Jesus-Felicier case, however, where the attorneys appeared late or failed to appear for scheduled hearings, the attorneys provided substantial medical and mental health problems to the trial court. As a result, the court discharged the lawyers from the case and allowed the criminal defendant to obtain a public defender. In the present case, however, the judge wrote in his Order that there was willful failure to appear and comply with his orders and dismissed the case without prejudice, causing an actual and significant injury to the victims in terms of

financial loss and time loss in resolving their probate matter. Moreover, this Court cannot say that Respondent provided ‘substantial medical and mental health’ evidence in this case. Although there was *some* evidence of that type presented, it falls far short of what could be fairly characterized as ‘substantial medical and mental health’ evidence as mentioned in the Jesus-Felicier case.

Under the evidence, admissions, and circumstances presented here, a public reprimand, as suggested by Respondent, would not be appropriate – and is entirely insufficient – to sanction Respondent for his admitted misconduct in this case.

VI. RECOMMENDED ATTORNEY DISCIPLINE TO BE APPLIED

I recommend that Respondent be found guilty of misconduct justifying disciplinary measures, and that he be disciplined by:

A. A 75-day suspension pursuant to R. Regulating Fla. Bar 3-5.1(e).

B. Two-years’ probation during which Respondent shall attend

Professionalism Workshop within 6 months of the issuance of the final order in this case. Respondent shall be responsible for any fees associated with Professionalism Workshop.

C. In addition, Respondent will contact Florida Lawyers Assistance, Inc. (“FLA”) within 30 days of the issuance of the final order in this case to schedule a psychiatric evaluation by a mental health professional who is an FLA-approved evaluator. Respondent will be responsible for any costs associated with this evaluation. Then, based on that evaluation, Respondent will follow whatever FLA recommends, including entering into a rehabilitation contract. Respondent will

follow all recommendations by FLA during the entire probation period. If respondent's evaluation reveals that no further treatment is necessary, then respondent's probation will terminate after 6 months. If respondent is required to enter into a rehabilitation contract, and should FLA recommend early termination, then, after six months, respondent's probation can be terminated early without further order of the Court.

Respondent shall pay \$250.00 for the FLA registration fee, and \$100.00 monthly monitoring fee to FLA, no later than the end of each month in which the monitoring fee is due. The Florida Bar will monitor respondent's payments to FLA. If respondent fails to pay his monthly monitoring fee, then the Florida Bar can hold respondent in contempt for failure to pay his monthly monitoring fees. Failure to pay shall be cause to revoke probation.

D. Payment of the Florida Bar's costs in these proceedings in the amount of \$ 1,456.75.

VII. PERSONAL HISTORY, PAST DISCIPLINARY RECORD

Prior to recommending discipline pursuant to Rule 3-7.6(m)(1)(D), I considered the following:

Personal History of Respondent:

Age: 79. Date admitted to the Florida Bar: November 10, 1969.

I considered the following Aggravating Factors-Standard 3.2(b):

(1) *Prior disciplinary record – admonishment-2003:*

Although a prior admonishment is present in Mr. Woodward's history, because it occurred over seven years ago, this Court completely disregarded the prior disciplinary record and gave said record zero consideration. For the purposes of this report, this Court considers there to be no prior disciplinary history; this factor was given no weight in the decision on this case.

(3) *Pattern of misconduct – repeated failure to obey orders:*

This case included a troubling pattern of misconduct that is simply inexplicable, especially considering Mr. Woodward's lengthy history as a Florida attorney. He failed to obey orders of the Circuit Court multiple times (giving rise to the Court issuing an Order to Show Cause and dismissing his client's case); he failed to meaningfully and promptly respond to the grievance committee; and he failed to meaningfully and promptly respond to Bar disciplinary inquiries. An attorney is an officer of the court, and is expected to respond promptly and appropriately to orders issued by a Circuit Court, inquiries of a grievance committee (which require a response), and inquiries of the Florida Bar for disciplinary matters (which also require a response). The required responses are akin to an order and Mr. Woodward repeatedly failed to obey orders. Based upon the admitted conduct, this Court cannot say this was a one-off event, or an isolated incident. This pattern of misconduct occurred over months of time, which suggests more than simply an accident or excusable neglect. The misconduct here could be rightly be characterized as a pattern of culpably negligent conduct, that is Mr. Woodward consciously followed a course of conduct that he must have known, or reasonably should have known, was likely to cause injury to his clients and be in violation of his obligations as a Florida attorney. This factor was given moderate to significant weight in this decision.

(4) *Multiple offenses – six admitted rule violations:*

For the reasons expressed above, this Court is troubled by the number of significant, and varied, types of violations admitted to by Mr. Woodward. These violations were not all of the same nature, nor did they point to a singular type of shortcoming in Mr. Woodward's legal practice. As stated above, these varied and multiple violations,

occurring over months of time, suggest at least culpably negligent (if not intentional and purposeful) type misconduct by Mr. Woodward as to the **six** different admitted rule violations. This misconduct is not accidental, and appears to be more than ordinary negligence; that is significant to this Court. This factor was given moderate to significant weight in the decision of this case.

(8) *Vulnerability of the victims:*

The victims in the case were especially vulnerable. They had been without a lawyer and were at a significant disadvantage as *pro se* litigants, as recognized by the trial judge who recommended they obtain a lawyer before proceeding to the final hearing. They did exactly that and put their trust in Mr. Woodward to resolve a difficult intra-family probate matter. They were in tough circumstances, and their situation was made significantly *worse* by Mr. Woodward's repeated misconduct. This Court determines that the injuries inflicted upon the victims (including case dismissal, financial loss, and time delay until resolution) by Mr. Woodward's various misconduct was *significant* under these circumstances. This factor was given moderate weight in the decision of this case.

(9) *Substantial experience in the practice of law:*

Mr. Woodward has been a member of the Florida Bar for over 52 years. He has significant legal experience throughout this State, and in other states, over those years. He is experienced enough to know better than to engage in this type of repeated and varied misconduct. Considering the broad depth of his experience, his admitted violations here simply defy logic and reason. They are inexplicable. This type of misconduct cannot occur by any lawyer – much less by a veteran lawyer with the storied background of Mr. Woodward. This factor was given moderate to significant weight in the decision of this case.

I considered the following Mitigating Factors-Standard 3.3(b):

(1) *Absence of prior disciplinary record:*

As discussed above, this Court has considered Mr. Woodward as having had no prior disciplinary record. Being a member of the Florida Bar for more than 52 years is notable. To have been a member that long with no prior disciplinary history is perhaps, even more notable. Following the Florida Bar rules and guidelines

appropriately for 52 years does matter. This factor weighs in favor of Mr. Woodward, and mitigates the circumstances of this case. This factor was given moderate weight in the decision of this case.

(2) *Absence of dishonest or selfish motive:*

There is no evidence that Mr. Woodward's misconduct was driven by dishonest motives or selfishness. Although, there are hints of his answers to the Circuit Court's Order to Show Cause which were at best inconsistent, and at worst dishonest. Mr. Woodward stood to gain little to nothing by his course of conduct, so it does not appear to have been driven by any sort of selfish motive. This factor also mitigates in favor of Mr. Woodward and was given moderate weight in the decision of this case.

(4) *Respondent made restitution to the victims:*

Mr. Woodward did refund his fee to the victims, but only after the grievance committee was notified. The fee was relatively low at a total of \$1,250. However, the victims still had to hire another lawyer to conclude the case, which was naturally delayed – at an additional (unknown) cost to the victims – due to the misconduct of Mr. Woodward. This factor mitigates somewhat for Mr. Woodward, and was given slight to moderate weight in the decision of this case.

(7) *Character or reputation:*

Mr. Woodward's character and reputation over his 52 years as a member of the Florida Bar is very good. This Court heard significant testimony from his character witness, and from Mr. Woodward, indicating that his character and reputation is solid, despite these admitted violations. This factor mitigates in Mr. Woodward's favor and was given slight to moderate weight in the decision of this case.

(8) *Mental disability or impairment:*

Mr. Woodward did present evidence through his expert witness of a mental health impairment that he claimed he had suffered from for years. However, he had not sought meaningful treatment until September of 2021 for these issues. Throughout his 52 year legal career, this mental disability or impairment has apparently only caused him professional difficulty during this pattern of misconduct – as evidenced by his high level of competence throughout the vast majority of his lengthy legal career. Nevertheless, he did receive a

mental health diagnosis, and worked with his expert to address his mental health medications and their appropriate dosing levels. He appears to have his mental health concerns addressed at this time. This factor also mitigates somewhat in favor of Mr. Woodward and was given slight to moderate weight in this decision.

(12) Remorse:

Mr. Woodward did express remorse for his conduct. However, it was difficult to assess whether the remorse was simply because he was before this Court on these admissions, or whether the remorse was genuine regarding his impact upon the victims. Regardless, he did take responsibility for his violations and expressed some remorse for his misconduct. This factor mitigates in favor of Mr. Woodward and was given slight to moderate weight in the decision of this case.

VIII. STATEMENT AND TAXING OF COSTS

Administrative Fee	\$1,250.00
Investigative Costs	6.75
Court Reporter's Fees	<u>200.00</u>
TOTAL	\$1,456.75

I find the above listed costs were reasonably incurred by The Florida Bar.

It is recommended that such costs be charged to respondent and that interest at the statutory rate shall accrue and be deemed delinquent 30 days after the judgment in this case becomes final unless paid in full or otherwise deferred by the Board of Governors of the Florida Bar.

Dated this 12th day of January 2022.



Judge Dustin Scott Stephenson, Referee
PO Box 786
Panama City, FL 32402-0786

Original To:


Clerk of the Supreme Court of Florida; Supreme Court Building; 500 South Duval Street, Tallahassee, Florida, 32399-1927

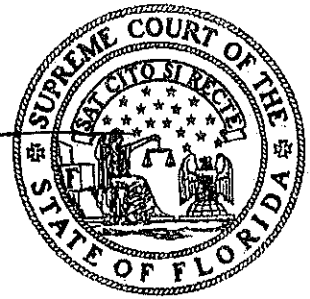
Conformed Copies to:

Richard Adam Greenberg, Respondent's Counsel, at rgreenberg@rumberger.com, rgreenbergsecy@rumberger.com, docketingorlando@rumberger.com

Olivia Paiva Klein, Bar Counsel, at oklein@floridabar.org, dlee@floridabar.org

Patricia Ann Toro Savitz, Staff Counsel, The Florida Bar, at psavitz@floridabar.org

A True Copy
Attest:
John A. Tomasino, Clerk
Supreme Court of Florida
By  Deputy Clerk



Supreme Court of Florida

THURSDAY, APRIL 14, 2022

CASE NO.: SC20-1842
Lower Tribunal No(s):
2020-00,232(1A)

THE FLORIDA BAR

vs. DAVID LUTHER WOODWARD

Complainant(s)

Respondent(s)

The uncontested report of the referee is approved and respondent is suspended from the practice of law for seventy-five days, effective thirty days from the date of this order so that respondent can close out his practice and protect the interests of existing clients. If respondent notifies this Court in writing that he is no longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall fully comply with Rule Regulating the Florida Bar 3-5.1(h). Respondent shall also fully comply with Rule Regulating the Florida Bar 3-6.1, if applicable. In addition, respondent shall accept no new business from the date this order is filed until he is reinstated. Respondent is further directed to comply with all other terms and conditions of the report.

Upon reinstatement, respondent is further placed on probation for two years under the terms and conditions set forth in the report.



CASE NO.: SC20-1842

Page Two

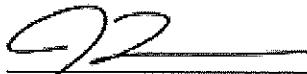
Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from David Luther Woodward in the amount of \$1,456.75, for which sum let execution issue.

Not final until time expires to file motion for rehearing, and if filed, determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

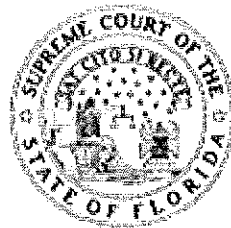
CANADY, C.J., and POLSTON, LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



ca

Served:

RICHARD A. GREENBERG
OLIVIA PAIVA KLEIN
HON. DUSTIN STEPHENSON, JUDGE
PATRICIA ANN TORO SAVITZ

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

Contents

I. GENERAL PROVISIONS	1
Rule 1.01. Definitions.....	1
Rule 1.02. General Powers	1
Rule 1.03. Additional Rules in Disciplinary Matters.....	1
Rule 1.04. Appointment of Panels	1
Rule 1.05. Filing of Pleadings, Motions, and Other Papers.....	1
Rule 1.06. Service of Petition	2
Rule 1.07. Hearing Setting and Notice	2
Rule 1.08. Time to Answer	2
Rule 1.09. Pretrial Procedure	2
Rule 1.10. Decisions	3
Rule 1.11. Board of Disciplinary Appeals Opinions.....	3
Rule 1.12. BODA Work Product and Drafts	3
Rule 1.13. Record Retention.....	3
Rule 1.14. Costs of Reproduction of Records.....	3
Rule 1.15. Publication of These Rules.....	3
II. ETHICAL CONSIDERATIONS	3
Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases.....	3
Rule 2.02. Confidentiality.....	4
Rule 2.03. Disqualification and Recusal of BODA Members	4
III. CLASSIFICATION APPEALS	4
Rule 3.01. Notice of Right to Appeal	4
Rule 3.02. Record on Appeal.....	4
IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS	4
Rule 4.01. Perfecting Appeal.....	4
Rule 4.02. Record on Appeal.....	5
Rule 4.03. Time to File Record.....	6
Rule 4.04. Copies of the Record	6
Rule 4.05. Requisites of Briefs	6
Rule 4.06. Oral Argument.....	7
Rule 4.07. Decision and Judgment	7
Rule 4.08. Appointment of Statewide Grievance Committee.....	8
Rule 4.09. Involuntary Dismissal.....	8
V. PETITIONS TO REVOKE PROBATION	8
Rule 5.01. Initiation and Service.....	8
Rule 5.02. Hearing.....	8

VI. COMPULSORY DISCIPLINE	8
Rule 6.01. Initiation of Proceeding	8
Rule 6.02. Interlocutory Suspension	8
VII. RECIPROCAL DISCIPLINE	9
Rule 7.01. Initiation of Proceeding	9
Rule 7.02. Order to Show Cause.....	9
Rule 7.03. Attorney’s Response.....	9
VIII. DISTRICT DISABILITY COMMITTEE HEARINGS	9
Rule 8.01. Appointment of District Disability Committee	9
Rule 8.02. Petition and Answer	9
Rule 8.03. Discovery	9
Rule 8.04. Ability to Compel Attendance.....	10
Rule 8.05. Respondent’s Right to Counsel	10
Rule 8.06. Hearing.....	10
Rule 8.07. Notice of Decision.....	10
Rule 8.08. Confidentiality.....	10
IX. DISABILITY REINSTATEMENTS	10
Rule 9.01. Petition for Reinstatement	10
Rule 9.02. Discovery	10
Rule 9.03. Physical or Mental Examinations	10
Rule 9.04. Judgment	10
X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS	11
Rule 10.01. Appeals to the Supreme Court.....	11

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.