



May. 24, 2018

Board of Disciplinary Appeals

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

IN THE MATTER OF	§	
SCOTT DOUGLAS FLETCHER	§	CAUSE NO. <u>60490</u>
STATE BAR CARD NO. 24029191	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Scott Douglas Fletcher, (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 Scott Douglas Fletcher, 415 N. McKinley St., Ste. 840, Little Rock, Arkansas 72205.

3. On or about September 29, 2011, a Hearing Finding and Order (Exhibit 1) was filed with the Arkansas Supreme Court Committee on Professional Conduct, Panel B, in a matter styled, *IN RE: SCOTT DOUGLAS FLETCHER, Arkansas Bar ID #91236*, CPC Docket No. 2010-028, that states in pertinent part as follows:

... **WHEREFORE**, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, after a *de novo* hearing, that the Arkansas law license of **SCOTT DOUGLAS FLETCHER**, Arkansas Bar ID# 91236, be, and hereby is, **SUSPENDED FOR**

SIXTY (60) MONTHS...

4. The Arkansas Supreme Court Committee on Professional Conduct, Panel B, found that Respondent violated the following Rules:

Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

A.1 By a vote of five (Crane, Hodges, Morris, Mayton and Ross) to two (Dunham and Orton), the panel found the conduct of Scott D. Fletcher violated Model Rule 1.1, in that based on legal advice from Fletcher, Jewell Rapier and her spouse purchased several tracts of real estate from the Buck LP at prices far below the fair market values for the lands at the time.

A.3. - By a vote of six (Crane, Orton, Hodges, Morris, Mayton and Ross) to one (Dunham), the panel found a violation of Model Rule 1.1, where Mr. Fletcher failed to advise Jewell Rapier that Rapier, as general partner for the Buck LP, should expose the Buck LP land assets to the market and other potential buyers than just herself and her spouse, her relatives, and her friends, to determine the most advantageous prices at which the Buck LP lands could be sold for the benefit of the Buck LP and the Buck Trust, which was the sole limited partner of the Buck LP.

A.4 - By a vote of six (Crane, Orton, Hodges, Morris, Mayton and Ross) to one (Dunham), the panel found a violation of Model Rule 1.1 where, acting on legal advice from Mr. Fletcher, Jewell Rapier, as general partner of the Buck LP, in March-May 2002 sold 561 acres of Buck LP lands to Maumelle Properties, Inc., as a "straw man," for \$280,650 while knowing that Ives & Associates, Inc. had offered the Buck LP \$350,000 for the same property. On the advice of Fletcher, and without exposing this large tract to the market, Rapier sold it for far less than its fair market value, even the \$350,000 price paid by Ives, as shown by the substantial appraisal differences between the Yingling and the Pattison appraisals and the offer price by Ives and the Ives "Parker" appraisal (Exhibit A-25) once Ives obtained ownership of the 561 acres.

Model Rule 1.2(d) provides that a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

B.1 - By a vote of six (Crane, Orton, Hodges, Morris, Mayton and Ross) to

one (Dunham), the panel found a violation of Model Rule 1.2(d) where Mr. Fletcher assisted his client Jewell Rapier, in one or more of her various fiduciary capacities with Buck entities, to receive and take control of the funds represented by a cashier's check payable to Rapier Ridge Hunting Club, Inc. for \$31,878.94 on or about May 14, 2002, from the proceeds of the sale of Buck LP real property to Maumelle Properties, Inc., and then to Ives, funds that were purportedly paid to Rapier for her services as one or some combination of Executrix of the Mildred Buck Estate, services as trustee of the Mildred Buck Trust, and services as the general partner of the Buck LP, a payment made by Fletcher's law firm to Rapier without proper documentation, and without court approval where required by probate and possibly other laws. Fletcher should have known that such undocumented and disguised payments, under the circumstances, were fraudulent conduct by Rapier toward the Buck entities to which she owed fiduciary duties, conduct in which she was materially assisted by Fletcher.

Model Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

D.1- The panel unanimously found the conduct of Mr. Fletcher violated Model Rule 1.4(b), in that Jewell Rapier relied entirely on Mr. Fletcher for legal advice as to how she could and should execute her duties as executrix, trustee, and general partner of the various Buck entities, and the facts now demonstrate that Fletcher did not explain her duties and limitations in those fiduciary capacities to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Model Rule 1.15(b) requires that upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

H.1 - By a vote of five (Crane, Hodges, Morris, Mayton and Ross) to two (Dunham and Orton), the panel found the conduct of Mr. Fletcher did violate Model Rule 1.15(b), in that after receiving the approximately \$65,000 from the Maumelle to Ives sale in mid-April 2002, funds in which the Buck LP and the Buck Trust, as the 99% interest limited partner in the Buck LP, had an interest, Fletcher failed to promptly deliver to the Buck LP or the Buck Trust, both of whom he represented, their share of these funds.

H.2. The panel unanimously found the conduct of Mr. Fletcher did violate Model Rule 1.15(b), in that after receiving the approximately \$65,000 from the Maumelle to Ives sale in mid-April 2002, funds in which the Buck LP and the Buck Trust, as the 99% interest limited partner in the Buck LP, had

an interest, Fletcher failed to promptly render a full accounting as to these funds to the beneficiaries of the Buck Trust, after a request to Fletcher for such an accounting was made in September 2002 by Robert Maertens, as a beneficiary of the Buck Trust.

Model Rule 4.1(a) requires that in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

J. By a unanimous vote, the panel found Mr. Fletcher violated Model Rule 4.1(a), when, in his letter to "Steve" [Steve Curry] on November 3, 2002, Fletcher knowingly made a false statement to Curry, by then the counsel for Jewell Rapier individually in the Maertens v. Rapier lawsuit, that Fletcher knew to be false, when Fletcher informed Curry that Keith Moser had told Fletcher that Moser was at that time holding the approximately \$65,000 sellers proceeds from the April 2002 Maumelle Properties to Ives land sale in Moser's separate client trust account. Fletcher personally knew this was a false statement to Curry because Fletcher had signed JMFH trust check #6066 on May 14, 2002, for \$31,883.94 to purchase a cashier's check to Jewell Rapier's Rapier Ridge Hunting Club. Fletcher further knew at the time he wrote Curry that JMFH trust check #6067 had been issued on May 14, 2002, for \$32,832.73 to JMFH for "fee income" in payment of the JMFH billing of that amount to Maumelle Properties, a bill Fletcher had generated. At the time Fletcher made this false statement to Curry, Jewell Rapier, in her individual capacity, was not Fletcher's client, but a third person.

Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

K.1 - By a unanimous vote, the panel found Mr. Fletcher violated Model Rule 8.4(c) when, on November 3, 2002, Fletcher knowingly gave false information to "Steve" [Steve Curry], attorney for Jewell Rapier, by means of a letter authored by Fletcher, about the then-current status of the approximately \$65,000 in net seller's proceeds from the Maumelle Properties sale to Ives & Associates, conduct involving dishonesty, fraud, deceit or misrepresentation by Fletcher.

K.2 - By a unanimous vote, the panel found Mr. Fletcher violated Model Rule 8.4(c) when he knowingly gave false information to Donald Spears, attorney for Jewell Rapier, by means of a letter authored by Fletcher, about the then-current status of the approximately \$65,000 in net seller's proceeds from the Maumelle Properties sale to Ives & Associates, conduct involving dishonesty, fraud, deceit or misrepresentation by Fletcher.

The Panel also specifically found that the conduct found proven is "serious misconduct," as defined in Section 17.B of the Court's Procedures Regulating Professional Conduct of Attorneys at Law.

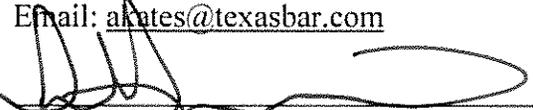
5. A copy of the Hearing Findings and Order is attached hereto as Petitioner's Exhibit 1, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce a certified copy of Exhibit 1 at the time of hearing of this cause.

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

Respectfully submitted,

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Amanda M. Kates
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ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

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

Scott Douglas Fletcher
415 N. McKinley St., Ste. 840
Little Rock, Arkansas 72205



Amanda M. Kates

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Effective February 19, 2015 and amended September 20, 2016

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SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as 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 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, 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, 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.

SECTION 2: 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.

SECTION 3: 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.

SECTION 4: 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 consistent with this

requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21.

- (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.

- (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, 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 post submission 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 appear.
 - (5) A court reporter or recorder must not lock any document that is part of the record.
 - (6) 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.

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. 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.

SECTION 5: 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.

- (b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23, 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.

SECTION 6: 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.

SECTION 7: 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.

SECTION 8: 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.

SECTION 9: DISABILITY REINSTATEMENTS

Rule 9.01 Petition for Reinstatement

- (a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. 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.

SECTION 10: 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.

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

IN RE: SCOTT DOUGLAS FLETCHER
Arkansas Bar ID #91236
CPC Docket No. 2010-028

FILED

SEP 29 2011

LESLIE W. STEIN
CLERK

HEARING FINDINGS AND ORDER

The formal charges of misconduct upon which this Hearing Findings and Order is based were developed from information provided to the Committee by Sam Perroni in December 2008. The information related to the representation of Jewell Rapier, generally in her capacities as Executrix of the Estate of Mildred Buck, Trustee of the Mildred Buck Revocable Living Trust ("Buck Trust"), and General Partner of the Buck Properties I, LLLP ("Buck LP"), in Saline County from 2000 through mid-2003 by Respondent Scott Douglas Fletcher, an attorney practicing primarily in Little Rock, Arkansas. On April 21, 2010, a formal Complaint was filed, supported by depositions, testimony, or sworn statements from Keith Moser (2), Randall Ives, Bruce Chavis, Jewell Rapier (3), Scott Fletcher (3), Randy Prickett (2), Robert Maertens, Robert J. Standard, Donald Spears, Stephen Curry, and Floyd Pederson, Jr., along with a Master List of eighty-one (81) exhibits.

Respondent Fletcher filed his Response on June 29, 2010, supported by exhibits and affidavits from Travis Yingling, Jewell Rapier, Rufus Wolff, Stephen Curry, Donald Spears, Carole Stanyar, and Donald Campbell, III. In July 2010, the Office of Professional Conduct filed rebuttal affidavits from Jim Martin, Donald Spears, Brenda Watts, Sharrock Dermott, Stephen Curry, Randy Prickett, and Jewell Rapier. In late August 2010, the ballot vote panel chair permitted the filing of additional affidavits from Travis Yingling and Jim Martin.

The case went through the ballot vote process with Panel A, and Respondent was notified

of that result. He then requested a *de novo* hearing, which was set for and conducted on May 4-5, 2011, by Panel B. Members participating in the hearing were: Chair James Dunham, Steve Crane, Henry Hodges, Sylvia Orton and Carolyn Morris from Panel B, and Michael Mayton (Panel C attorney) substituting for Barry Deacon who was not available, and James Ross (Panel D attorney) substituting for Valerie Kelly who recused.

I. SUMMARY OF COMPLAINT

1. Mr. Fletcher was licensed in 1991, and worked from then at the law firm called Jewell & Moser, P.A., later known as Jewell, Moser, Fletcher & Holleman (JMFH), until he left by August 1, 2002. By 1997, Fletcher was the president of the legal corporation and a one-third shareholder. After August 1, 2002, Fletcher practiced as Fletcher Law Firm, P.A.

2. Mildred Buck of Saline County, an elderly widow with no children, died testate on April 13, 2001, at age eighty-eight (88) years. Her god-daughter, Jewell Rapier, no kin, had provided care and companionship to Ms. Buck in her later years. Ms. Rapier knew Scott Fletcher through her employment. Rapier and Fletcher worked together in 2000 to provide Ms. Buck with estate planning services, including a will, revocable living trust, and a limited partnership. After Ms. Buck died in April 2001, Rapier exercised complete legal control over the Buck Estate, the Buck Trust, and the Buck limited partnership (Buck LP). Rapier had no legal education, legal training, legal experience, or advanced or sophisticated legal, real property, probate, or tax law knowledge at any time. Scott Fletcher was Rapier's sole legal adviser in her various fiduciary capacities until March 2003.

3. The Buck LP owned slightly over 1,000 acres of undeveloped rural land in Saline County. Ms. Rapier was the sole general partner of the Buck LP, and was given 1% of the ownership units. The Buck Trust, of which Ms. Rapier was the sole Trustee, was the sole limited partner of the Buck

LP, and owned 99% of the ownership units. In March 2001, Ms. Rapier engaged Travis Yingling of Benton to perform an appraisal of the Buck properties. Mr. Yingling was state-licensed as a Certified Residential (“CR”) appraiser, but not as a Certified General (“CG”) appraiser. His appraisal valued the tract containing a certain 561 acres at \$500 per acre, for use as hunting property. In an appraisal dated April 1, 2002, Roger Parker, a CG certified appraiser, valued the 561 acre tract at \$1,450 per acre for the use of Mr. Ives in obtaining his bank loan to purchase the tract from the Buck LP.

4. Acting as Trustee or sole general partner of the Buck LP, in December 2001-August 2002, Ms. Rapier sold Buck Trust or Buck LP lands to (1) herself and her husband, (2) to a retirement trust for a corporation they controlled, (3) to her brother and his wife, (4) to friends, and (5) to neighboring landowners. Mr. and Mrs. Rapier, or entities they owned or controlled, purchased about 216 of the 1,000+ acres. Ms. Rapier also sold a 561 acre Buck LP tract to Ives & Associates (Ives) through a “strawman” entity, Maumelle Properties, Inc. (“Maumelle” or “MPI”), controlled by Fletcher’s law firm, Jewell, Moser, Fletcher & Holleman, P.A. (JMFH). As general partner of the Buck LP, Rapier first negotiated a price of \$350,000 with Ives for the 561 acres, or \$625 per acre versus the Yingling \$500 per acre appraisal. Then, acting on advice from Fletcher and JMFH, Rapier first sold the 561 acres to Maumelle for \$280,650, the Yingling \$500 per acre appraised value, and Maumelle then promptly resold the same land to Ives for the agreed \$350,000, or about \$65,716 more. The beneficiaries of the Buck Trust were not provided information about the existence of or their interests in the Buck Trust or the activities of Rapier as Trustee and as general manager of the Buck LP until late 2002, and then only grudgingly by Fletcher, acting as counsel for Ms. Rapier, when Robert Maertens began asking questions of Rapier and Fletcher. In early 2002, Rapier and Fletcher turned down an offer from a local realtor to list the Buck properties to the public. Ms.

Rapier turned down Mr. Ives' request to purchase more Buck lands, stating to Ives that the lands had been spoken for.

5. The signature "Robert J. Standard" appeared on documents in the Buck LP-Maumelle Properties - Ives 561 acre transactions in 2002, and particularly on the offer & acceptance, \$280,650 promissory note, and mortgage from Maumelle to the Buck LP. The "Robert Standard" signatures were notarized in several places by Desha Kyzer, Mr. Fletcher's secretary from 1994 to present date. Mr. Fletcher and Ms. Kyzer have not explained how the "Standard" signatures got on these documents. There are intimations that the signatures may have been forged. Mr. Fletcher describes Mr. Standard as a long-time best friend from Illinois and that each served as a member of the wedding party in each other's wedding. Mr. Standard has not appeared in this case by affidavit or testimony, on the subject of the 2002 execution of the "Maumelle" land sale documents. Mr. Fletcher testified at hearing that he did not become aware of the "Robert Standard" name being on the Maumelle transaction documents until the Maertens v. Rapier suit was filed in October 2002, or maybe even later.

6. The "net" seller's proceeds of approximately \$65,716 from the Maumelle-Ives sale closing in April 2002, funds that all agreed belonged to the Buck LP, were unaccounted for to anyone outside Jewell Rapier and Scott Fletcher until late July 2003, when Keith Moser, a former member of JMFH, provided the information in the Maertens v. Rapier lawsuit as to the distribution or whereabouts of the funds. Neither Rapier or Fletcher disclosed to the Buck Trust beneficiaries, as Buck LP participants that \$31,878.94 of these funds had been disbursed on May 14, 2002, from the JMFH client trust account to Jewell Rapier's new hunting club by trust check #6066, signed by Scott Fletcher, and that \$32,832.73 was disbursed by JMFH client trust account check #6067, signed by

Scott Fletcher, to JMFH as “earned fees” and expenses in payment of the May 14, 2002, JMFH billing to the “strawman,” Maumelle Properties, Inc., in connection with its sale of the 561 acres to Ives in early April 2002.

7. The financial records of Jewell & Moser, PA/JMFH and of the Jewell & Moser, PA, (also the JMFH) Client Trust Account show the firm accounted for the \$32,832.73 disbursed by trust account check #6067, made payable to the firm, on May 14, 2002, as “fee income” to the law firm. This \$32,832.73 could not have been residing in any JMFH trust account from then until August 22, 2003, when Keith Moser produced a check for \$33,832.73 drawn on his newer and separate Moser firm trust account to deposit these disputed funds into the court registry in the Maertens lawsuit. The disbursements on May 14, 2002, of the \$31,883.94 to Rapier Ridge Hunting Club and the \$32,832.73 to JMFH left a balance of \$1,000.00 of “Maumelle-to-Ives” seller’s funds that should have been thereafter held for the Buck LP in the JMFH client trust account, or accounted-for to the Buck LP.

8. Mr. Fletcher left the JMFH firm by August 1, 2002, and the other principals, left soon thereafter. The former JMFH law firm was judicially dissolved in a later court case. By early July 2002, Fletcher was aware of a federal criminal investigation of his partner Keith Moser in Michigan, which eventually led to Moser’s guilty pleas in Arkansas in late 2004 and a lengthy prison sentence for fraud involving theft of client funds. Learning of the Moser investigation caused Fletcher to leave the JMFH firm within days. If any of the Buck LP “\$65,000” was left by Fletcher at JMFH, or with Moser, when Fletcher left JMFH, Fletcher failed to take appropriate steps to obtain and safeguard those funds belonging to his client Buck LP, knowing what he did at the time about Moser.

9. In a letter dated November 3, 2002, Fletcher made a material false statement to Steve Curry, by then Jewell Rapier’s new personal attorney, about the status of the \$65,000 from the

Maumelle-Ives sale. On May 14, 2002, Fletcher signed two JMFH trust checks totaling about \$64,716 and disbursed those Buck LP funds from the trust account. In the letter to Curry, Fletcher merely repeated information he attributed to Moser, without disclosing to Curry that Fletcher had personally disbursed the \$64,716 months earlier, information Fletcher later stated he knew was false at the time of his letter to Curry.

10. Robert Maertens, a Buck Trust beneficiary, filed the initial state court civil suit against Ms. Rapier in October 2002. Based on Maertens' limited knowledge and information at the time, he raised only the fact that the 561 acre tract had been sold twice in March-April 2002, once for \$280,650 to MPI, with 100% seller financing, and then again for \$350,000 to Ives. Maertens did not have a reason at that time to question what happened to the difference of over \$65,000. The suit did ask for an inventory and accounting by Jewell Rapier of the Buck Trust and the Buck LP. Shortly thereafter, Fletcher arranged for Steve Curry to represent Jewell Rapier, individually and as Buck Trustee, in the suit, while Scott Fletcher continued to represent the Buck LP and Rapier as general partner of the Buck LP. Steve Bauman, a Maertens attorney, wrote Curry on October 24, 2002, requesting an accounting of the Buck Trust.

11. On or about November 1, 2002, Fletcher filed an Answer for Buck Properties I, LLLP, (Buck LP), but did not mention anything about assets, make any accounting, or mention the status of the approximately \$65,000 that belonged to the Buck LP from the Maumelle-Ives sale. On about the same day, Curry filed an Answer for Jewell Rapier, Individually, as Executrix of the Buck Estate, and as Trustee of the Buck Living Revocable Trust, but never mentioned anything about assets, made no accounting, and did not mention the status of the approximately \$65,000 that belonged to the Buck LP from the Maumelle-Ives sale.

12. On November 3, 2002, Fletcher wrote Curry that Keith Moser had informed Fletcher on "Friday" (11-1-02) that the \$63,216.67 and the Ives \$2,500 earnest money are "credited in the JMFH client trust account still and that he [Moser] will testify as the corporate designee of Maumelle Properties, Inc. I guess the \$65,716.67 can be moved from the JMFH client trust account ASAP, if necessary." Fletcher never mentioned that he personally signed JMFH trust checks #6066 and #6067 on May 14, 2002, that disbursed about \$64,716 of the Buck LP funds.

13. On November 12, 2002, Keith Moser was deposed in the Maertens suit. He stated that the two Ives closing checks, \$2,500.00 and \$63,216.67, were "deposited into our trust account," "Those funds are still in our trust account," and "those funds right there belong to Buck Properties I, LLLP." Moser also testified that Fletcher handled all this, Moser did not prepare the federal estate tax return for the Buck Estate, Rapier was Fletcher's client, the proceeds of the Maumelle sale to Ives were still in Moser's trust account, and had not been distributed to the Buck LP because Moser was waiting for a Buck federal estate tax "closing letter."

14. In early January 2003, the Maertens parties engaged Dwight Pattison, a CG certified appraiser, to appraise all Buck properties. He valued the 561 acre tract at \$1,500 per acre.

15. On July 21, 2004, Fletcher was deposed in the Rapier v. Fletcher third party suit. He stated that the Maumelle-Ives net seller's proceeds check [\$63,216.67] was deposited into the JMFH trust account and a check of about \$34,000, or a few thousand dollars more than the check to Jewell Rapier, was written off those funds, which he stated belonged to Buck Properties, to JMFH for legal fees and costs that had accrued as of that date, on a firm statement to Maumelle Properties. He stated that, after the disbursements to (1) Jewell Rapier, characterized as for her fees for her services as executor, trustee, and general partner of the partnership, and (2) to JMFH, about \$1,000 remained

reserved for expenses that had not been billed. This was the first disclosure by Fletcher as to what happened to the Buck LP seller's proceeds from the MPI-Ives sale in April 2002.

16. Fletcher stated that as of that [deposition] date, July 21, 2004, he did not know if either Ms. Rapier (\$31,878) or the law firm or Keith Moser (\$33,832) had paid back these funds to the JMFH trust account. Fletcher stated that as of July 29, 2003, he understood the trust account balance at JMFH to have been about \$40.

17. Fletcher discussed his handwritten letter of November 3, 2002, to "Steve" Curry, (Exhibit 34), admitting he knowingly told Curry a falsehood about the statement Fletcher attributed to Moser about the \$65,000 still being in the firm trust account. Fletcher explained his false statement by saying he wrote Curry to talk to Moser about it. Fletcher stated this was his way of "signaling" Curry that Curry should somehow not accept Fletcher's knowing false statement about the whereabouts of the Buck LP funds but should go himself to Moser to get the truth about the funds.

18. On February 11, 2003, the expanded number of Maertens plaintiffs filed their First Amended and Substituted Complaint, naming additional Defendants, including Ives & Associates, Maumelle Properties, Keith Moser and Moser's separate law firm client trust account. In §13(d), the Amended Complaint sets out that the \$65,000, more or less, the cash difference in the Buck to Maumelle sale and the Maumelle to Ives sale, on information and belief, was then being held by Moser in the Moser & Associates, P.A. client trust account, the funds were property of the Buck Trust, and should be delivered to the Trust. On or about March 3, 2003, Fletcher filed the Answer for Buck Properties I Limited Partnership (Buck LP) to the Amended Complaint, denying that the approximately \$65,000 from the Maumelle-Ives transaction was being held in the Moser & Associates, P.A. client trust account. Fletcher further stated that the approximately \$65,000 was an

asset of Buck LP, that there was an oral agreement requiring that Moser & Associates, P.A. client trust account deliver the approximately \$65,000 to Buck LP once the Internal Revenue Service has issued an Estate Tax Closing Letter to the [Buck] Estate accepting the Form 706 as filed and without adjustment. The IRS Closing Letter for the Buck Estate, without adjustment, is dated March 20, 2003, and addressed to Jewell Rapier at her home address.

19. No delivery of any funds from the Maumelle-Ives closing was made to the Buck Trust or Buck LP until August 22, 2003, when Keith Moser interplead into the Court \$33,832.73 he stated was "currently" in the Moser & Associates, P.A. client trust account and that belonged to Buck Properties I LP (Buck LP). Moser stated the \$65,716.67 deposit was made into the JMFH client trust account on May 14, 2002. Moser then disclosed the \$31,883.94 check from the JMFH trust account used to purchase the \$31,878.94 cashier's check to Rapier Ridge Hunting Club. He stated that the balance of these [Buck LP] funds was transferred, at some unstated date, to the new Moser & Associates, P.A. client trust account. Mr. Moser never mentioned any agreement that he was to hold these funds, or any funds, until the Buck Estate IRS estate tax closing letter was received and then deliver the funds to the Buck LP, as Fletcher had stated was their oral agreement.

20. On July 23, 2003, Don Spears, now Jewell Rapier's counsel, replacing Curry, wrote Moser and Fletcher, informing them of the receipt of the IRS estate tax closing letter, and asking for the Buck LP money from whoever has it. An exchange of letters among Spears, Moser, and Fletcher followed in late July 2003, but Fletcher did not disclose to Spears the information Fletcher personally had about his disbursement of the \$64,716 by the two checks in May 2002.

21. In October 2002, Buck Trust beneficiary Robert Maertens sued Jewell Rapier, alleging self-dealing by her in her various fiduciary capacities and her sales of Buck LP lands at prices well

below fair market value. Rapier was first represented in this suit by Steve Curry, and then from February 2003 on by Donald Spears. By July 2003, negotiations between the Maertens plaintiffs and Jewell Rapier had progressed to the point where she executed a Memorandum of Understanding (MOU), making certain admissions and agreeing to entry of a large money judgment, calculated in the MOU at almost \$1,000,000, against her if certain future events did not work out as stated. Rapier agreed to assist the plaintiffs by personally suing Scott Fletcher for legal malpractice in connection with his earlier representation of her in her various fiduciary capacities. Tim Dudley filed her suit against Fletcher in September 2003, in which Rapier admitted that she had committed breaches of her fiduciary duties, relying upon legal advice she received from Mr. Fletcher. The suit was settled in September 2004, in a confidential agreement, the terms of which have not been revealed, but within Fletcher's \$1,000,000 professional liability CNA policy limit. In settling, Mr. Fletcher did not admit any wrong-doing. From this settlement a contingent attorney's fee of one-third was to be paid to Ms. Rapier's new attorney, Mr. Dudley.

22. In May 2005, CNA gave notice to Mr. Fletcher that, due to "unfavorable underwriting factors," CNA was not going to renew his liability policy on August 1, 2005. He purchased a six year "tail," or extended coverage, policy by August 1, 2005. Thereafter, Mr. Dudley filed at least six malpractice suits against Mr. Fletcher in state and federal courts, and five settled with payments made by or for Mr. Fletcher through late 2010.

23. Starting in late 2003, the new co-trustees and co-general partnerships of the Buck entities, Randy Prickett and Mark Riley, were able to "reverse" most of the Rapier land sales and recover those properties for the Buck LP. The 561 acre tract could not be legally recovered or "reversed." In late 2004, Prickett estimated the overall net after-tax loss to the Buck beneficiaries as a result of

mishandling of Buck financial affairs by Rapier and Fletcher, after all credits from the litigation settlement with Fletcher and other sources, to be about \$482,531.

II. SUMMARY OF FLETCHER RESPONSE

1. Fletcher believes he provided competent counsel to Jewell Rapier.
2. The sales by Rapier as general partner of Buck, LP were authorized by the partnership agreement and the law.
3. No property was purchased below the fair market value, since the value was determined by the 2001 independent appraisal of Travis Yingling. The later appraisals by Pattison and Parker used inappropriate comparables and had other issues. There was no reason for either Rapier or Fletcher to believe that the Yingling appraisal did not validly establish the fair market value of the Buck property.
4. The Buck LP property that is the focus of the complaint, the 561 acres, was sold to Ives for above the Yingling appraisal amount.
5. Based on advice given him by Keith Moser, a more experienced attorney, at the time of the "straw man" transaction and the sale of the Buck LP land, Fletcher believed that the use of a "straw man" was legal.
6. With regard to any duty Rapier had as a trustee of the Buck Trust, that matter was researched by Sharrock Dermott, as he was primarily responsible for matters concerning the trust and estate. Dermott also communicated with Rapier. Dermott was a senior associate with an LLM in tax. Dermott's work was supervised in this research by Moser. Fletcher relied on their findings as to Rapier's duty as a trustee to the Buck Trust.

7. The roles of Ms. Rapier as executor, trustee, owner and general partner must be treated separately with regard to Rapier's fiduciary obligations and the advice Fletcher gave her, because the fiduciary duties for each role differs depending on the law and the relevant documents, *e.g.*, the will, trust, or partnership agreement.

8. Ms. Rapier, in her many capacities, legitimately earned the funds that she received. JMFH did issue a check to Rapier Ridge Hunting Club, Inc. for \$31,878.94 for the benefit of Rapier, for her fees earned as 1% owner of the partnership, as executrix of the estate, as general partner of the Buck LP, and as trustee of the trust. We were authorized to do so by Rapier.

9. The fee charged by the JMFH law firm was reasonable. JMFH performed many services for Rapier over a several-year period as she acted in her various capacities as executor, trustee, owner and general partner. Rapier authorized payment of these legal fees.

10. At no time did I know Maumelle Properties, Inc. ("MPI") to be a client of JMFH.

11. I did not knowingly make a false statement to Steve Curry in my November 2002 letter. I related to him the truth. I purposely used the words "Moser told me". It was the exact truth that Moser told me that he was holding the approximately \$65,000 in the Moser & Associates trust account. At the time I wrote the letter, Curry and Moser were good friends who had done quite a bit of legal work together for mutual clients. Curry represented Moser in his divorce and later they officed together. Rapier was referred to Curry for representation in the lawsuit filed against her by the Buck estate beneficiaries because of Curry's association with JMFH. Because of Curry's relationship with Moser, I did not want to explicitly tell Curry that Moser, his friend, was lying to both of us about the approximately \$65,000.00. Moreover, I did not know what had happened to the \$32,832.73 after I left the firm on July 5, 2002, but I was

sure that Moser maintained control over it. I was trying to signal Curry that he should inquire further about the funds from his friend Moser and trace their whereabouts. Significantly, in neither of his first two affidavits, obtained by the Executive Director and then for me, does Curry ever state that I deceived him. At the time I wrote the letter to Curry, his client Rapier already had approximately \$32,000 as payment for her fiduciary fees and ownership interest in the LP. Therefore, he knew or should have known where that portion of the \$65,000 was located.

12. In my [July 30, 2003, Ex. 59] letter to Donald Spears, I did not give any false information. As evidenced by his [second] affidavit, Spears does not think that I lied, was dishonest, or misrepresented facts to him. I told Spears that I thought it would be best that Moser & Associates tender \$33,847.73 into the registry of the court. I made this statement for two reasons: first, I believed that Moser, as he had testified in his deposition had moved this money to the Moser & Associates client trust account when he formed his separate law firm. Second, I did not have the \$33,847.73 because I was no longer associated with JMFH after July 5, 2002, and was not affiliated with Moser & Associates. In fact, I never had access to these monies. Therefore, I thought that if Spears wanted that money to be refunded to the court, then he would have to get Moser to tender it into the registry of the court, which Moser did. Rapier had received approximately \$31,000 before she retained Spears to represent her. Thus, Spears should have known about that portion of the proceeds of the \$65,000.

13. I did not know of MPI before Moser suggested it be used as a "straw person" in the Buck LP-MPI-Ives transaction. I did not know at the time of the Ives transaction (and only learned after the FBI began investigating Moser and Barry Jewell) that Rob Standard's name had been used without his authorization on deeds, mortgages, and other documents. I did not suspect that

Standard's signature on MPI documents was not his or that he had not consented to become an officer or director of MPI. As established in the trial of *U.S. v. Jewell*, Moser was a very good forger of others' signatures and was not reluctant to do so.

III. HEARING EVIDENCE

At the hearing, the Executive Director presented live testimony from adverse party Scott Fletcher, Desha Kyzer, Travis Yingling, and Randy Prickett. Respondent presented testimony from himself and Jennifer Mitchell. The "pleadings packet," consisting of the Complaint, Response, rebuttal materials, sur-rebuttal affidavits of Yingling and Martin, new Exhibits 100-105, 127, 129, 132-137, and replacement (redacted) Exhibit R were admitted into the record. Exhibit 121 was proffered by the Executive Director, and placed under seal by the Panel Chair at the request of Respondent's counsel.

Witness Kyzer generally testified that she did not know the circumstances under which the signature of "Robert J. Standard" got on the 2002 MPI sale documents she notarized, or just who actually prepared those documents. She stated that at times a photocopy of a person's driver's license was kept in a firm file and was compared against to verify a signature on a document purportedly signed by that person that was to be notarized.

Witness Yingling generally testified about the circumstances surrounding his 2001 appraisal of the Buck properties for Ms. Rapier. He stated that his full file, containing his "comparables" information on the Buck appraisal had long ago been destroyed.

Witness Mitchell generally testified about the contents of her affidavit; that the appraisals done by Parker and Pattison were not appropriate to rely on for the Buck properties; that Yingling's appraisal was the most valid, in her opinion; that Yingling and she had discussed the

Buck lands matter in the past; that she was engaged by Maertens and his attorney to appraise the Buck properties in late 2002 but declined to continue the assignment after Maertens approached her with “comparables” information; and that she had co-produced appraisals with Yingling for about seven years with about 5-15% of her annual appraisal income being derived from fees she split with Yingling. She also testified that she gave her executed Affidavit on April 15, 2011, and was not told of the 2003 Pattison appraisal until several days later, at a meeting with Respondent’s counsel. She did not thereafter revise her affidavit.

Witness Prickett generally testified about the contents of his two affidavits; that appraiser Pattison was presented additional comparables in early 2003 by Bob Maertens and Prickett and adjusted his final appraisal values about ten percent (10%) to \$1,500 per acre on the 562 acre tract; that after gaining control of the Buck Trust and Buck LP in August 2003, Mark Riley and he, as co-general partners, had listed the Buck LP properties with an area realtor, done a small bit of land swapping with a timber company to improve road frontage, subdivided eighty (80) acres Mr. and Mrs. Rapier had personally purchased into eight, ten acre lots, and sold them for a gross price of about \$5,500 per acre, before the realtor’s commission was deducted.

Respondent Fletcher testified at length, covering many areas in the Complaint, his Response, and in rebuttal materials and newly-offered hearing exhibits. He also stated he had had no communication with his old friend Robert Standard about the subject matter of this case since it was filed or about the hearing, and did not know why Standard had not submitted any affidavit or was not present as a witness. He also stated that the Rapier v. Fletcher malpractice lawsuit was settled in August or September 2004 because (1) of the “strawman” transaction and (2) because of the adverse publicity since February 2004 surrounding Keith Moser’s criminal charges, his

flight, and his stealing client funds. He also agreed that CNA notified him in May 2005 that it would not renew his professional liability coverage on August 1, 2005, and that the only malpractice suit that had been filed against him at the time was the Rapier suit, settled by September 2004. He testified that all subsequent malpractice suits against him were based on events that arose or documents originating during his time at JMFH.

IV. RULE VIOLATIONS

Upon consideration of the formal Complaint and attached exhibit materials, the Response, all Rebuttal materials, testimony of witnesses, exhibits received at the hearing, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

A.1 - By a vote of five (Crane, Hodges, Morris, Mayton and Ross) to two (Dunham and Orton), the panel found the conduct of Scott D. Fletcher violated Model Rule 1.1, in that based on legal advice from Fletcher, Jewell Rapier and her spouse purchased several tracts of real estate from the Buck LP at prices far below the fair market values for the lands at the time.

A.2 - By a vote of five (Dunham, Crane, Orton, Morris and Ross) to two (Hodges and Mayton) that Mr. Fletcher did not violate Model Rule 1.1 on this charge.

A.3. - By a vote of six (Crane, Orton, Hodges, Morris, Mayton and Ross) to one (Dunham), the panel found a violation of Model Rule 1.1, where Mr. Fletcher failed to advise Jewell Rapier that Rapier, as general partner for the Buck LP, should expose the Buck LP land assets to the market and other potential buyers than just herself and her spouse, her relatives, and her friends, to determine the most advantageous prices at which the Buck LP lands could be sold

for the benefit of the Buck LP and the Buck Trust, which was the sole limited partner of the Buck LP.

A.4 - By a vote of six (Crane, Orton, Hodges, Morris, Mayton and Ross) to one (Dunham), the panel found a violation of Model Rule 1.1 where, acting on legal advice from Mr. Fletcher, Jewell Rapier, as general partner of the Buck LP, in March-May 2002 sold 561 acres of Buck LP lands to Maumelle Properties, Inc., as a "straw man," for \$280,650 while knowing that Ives & Associates, Inc. had offered the Buck LP \$350,000 for the same property. On the advice of Fletcher, and without exposing this large tract to the market, Rapier sold it for far less than its fair market value, even the \$350,000 price paid by Ives, as shown by the substantial appraisal differences between the Yingling and the Pattison appraisals and the offer price by Ives and the Ives "Parker" appraisal (Exhibit A-25) once Ives obtained ownership of the 561 acres.

Model Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B.1 - By a vote of six (Crane, Orton, Hodges, Morris, Mayton and Ross) to one (Dunham), the panel found a violation of Model Rule 1.2(d) where Mr. Fletcher assisted his client Jewell Rapier, in one or more of her various fiduciary capacities with Buck entities, to receive and take control of the funds represented by a cashier's check payable to Rapier Ridge Hunting Club, Inc. for \$31,878.94 on or about May 14, 2002, from the proceeds of the sale of Buck LP real property to Maumelle Properties, Inc., and then to Ives, funds that were purportedly paid to Rapier for her services as one or some combination of Executrix of the Mildred Buck Estate, services as trustee of the Mildred Buck Trust, and services as the general partner of the

Buck LP, a payment made by Fletcher's law firm to Rapier without proper documentation, and without court approval where required by probate and possibly other laws. Fletcher should have known that such undocumented and disguised payments, under the circumstances, were fraudulent conduct by Rapier toward the Buck entities to which she owed fiduciary duties, conduct in which she was materially assisted by Fletcher. Model Rule 1.2(d) provides that a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

C.1 - The panel unanimously found no violation by Mr. Fletcher on this charge of violating Model Rule 1.2(e).

C.2 - The panel unanimously found no violation by Mr. Fletcher on this charge of violating Model Rule 1.2(e).

C.3 - The panel unanimously found no violation by Mr. Fletcher on this charge of violating Model Rule 1.2(e).

D.1 - The panel unanimously found the conduct of Mr. Fletcher violated Model Rule 1.4(b), in that Jewell Rapier relied entirely on Mr. Fletcher for legal advice as to how she could and should execute her duties as executrix, trustee, and general partner of the various Buck entities, and the facts now demonstrate that Fletcher did not explain her duties and limitations in those fiduciary capacities to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Model Rule 1.4(b) requires that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed

decisions regarding the representation.

E.1 - The panel unanimously found no violation by Mr. Fletcher on this charge of violating Model Rule 1.5.

F.1 - The panel unanimously found no violation by Mr. Fletcher on this charge of violating Model Rule 1.7(b).

G.1 - By a vote of five (Dunham, Crane, Orton, Morris and Ross) to two (Hodges and Mayton) the panel found that Mr. Fletcher did not violate Model Rule 1.15(a) on this charge.

H.1 - By a vote of five (Crane, Hodges, Morris, Mayton and Ross) to two (Dunham and Orton), the panel found the conduct of Mr. Fletcher did violate Model Rule 1.15(b), in that after receiving the approximately \$65,000 from the Maumelle to Ives sale in mid-April 2002, funds in which the Buck LP and the Buck Trust, as the 99% interest limited partner in the Buck LP, had an interest, Fletcher failed to promptly deliver to the Buck LP or the Buck Trust, both of whom he represented, their share of these funds.

H.2. The panel unanimously found the conduct of Mr. Fletcher did violate Model Rule 1.15(b), in that after receiving the approximately \$65,000 from the Maumelle to Ives sale in mid-April 2002, funds in which the Buck LP and the Buck Trust, as the 99% interest limited partner in the Buck LP, had an interest, Fletcher failed to promptly render a full accounting as to these funds to the beneficiaries of the Buck Trust, after a request to Fletcher for such an accounting was made in September 2002 by Robert Maertens, as a beneficiary of the Buck Trust.

Model Rule 1.15(b) requires that upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer

shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

I. By a unanimous vote, the panel found no violation of Model Rule 3.3(a)(4).

J. By a unanimous vote, the panel found Mr. Fletcher violated Model Rule 4.1(a), when, in his letter to “Steve” [Steve Curry] on November 3, 2002, Fletcher knowingly made a false statement to Curry, by then the counsel for Jewell Rapier individually in the Maertens v. Rapier lawsuit, that Fletcher knew to be false, when Fletcher informed Curry that Keith Moser had told Fletcher that Moser was at that time holding the approximately \$65,000 sellers proceeds from the April 2002 Maumelle Properties to Ives land sale in Moser’s separate client trust account. Fletcher personally knew this was a false statement to Curry because Fletcher had signed JMFH trust check #6066 on May 14, 2002, for \$31,883.94 to purchase a cashier’s check to Jewell Rapier’s Rapier Ridge Hunting Club. Fletcher further knew at the time he wrote Curry that JMFH trust check #6067 had been issued on May 14, 2002, for \$32,832.73 to JMFH for “fee income” in payment of the JMFH billing of that amount to Maumelle Properties, a bill Fletcher had generated. At the time Fletcher made this false statement to Curry, Jewell Rapier, in her individual capacity, was not Fletcher’s client, but a third person. Model Rule 4.1(a) requires that in the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

K.1 - By a unanimous vote, the panel found Mr. Fletcher violated Model Rule 8.4(c) when, on November 3, 2002, Fletcher knowingly gave false information to “Steve” [Steve Curry], attorney for Jewell Rapier, by means of a letter authored by Fletcher, (Exhibit 34), about

the then-current status of the approximately \$65,000 in net seller's proceeds from the Maumelle Properties sale to Ives & Associates, conduct involving dishonesty, fraud, deceit or misrepresentation by Fletcher.

K.2 - By a unanimous vote, the panel found Mr. Fletcher violated Model Rule 8.4(c) when he knowingly gave false information to Donald Spears, attorney for Jewell Rapier, by means of a letter authored by Fletcher, (Exhibit 59), about the then-current status of the approximately \$65,000 in net seller's proceeds from the Maumelle Properties sale to Ives & Associates, conduct involving dishonesty, fraud, deceit or misrepresentation by Fletcher.

3. By unanimous vote, the panel found no violation by Mr. Fletcher of Model Rule 8.4(c) on Charge K.3 of the Complaint, relating to his filing of a pleading that was Exhibit 43.

4. By unanimous vote, the panel found no violation by Mr. Fletcher of Model Rule 8.4(c) on Charge K.4 of the Complaint, relating to disbursing, without adequate and appropriate supporting documentation, on May 14, 2002, \$31,878.94 to Rapier Ridge Hunting Club, Inc for the ultimate benefit of Jewell Rapier.

Model Rule 8.4(c) requires that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

L.1 - By unanimous vote, the panel found no violation of by Mr. Fletcher of Model Rule 8.4(d), alleging conduct that is prejudicial to the administration of justice.

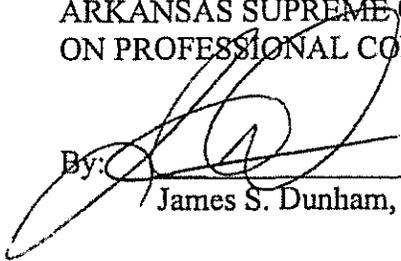
M. The Panel specifically found that the conduct found proven here is "serious misconduct," as defined in Section 17.B of the Court's Procedures Regulating Professional Conduct of Attorneys at Law.

V. SANCTION

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, after a *de novo* hearing, that the Arkansas law license of SCOTT DOUGLAS FLETCHER, Arkansas Bar ID# 91236, be, and hereby is, **SUSPENDED FOR SIXTY (60) MONTHS**, he is **FINED \$10,000.00**, and he is **ASSESSED COSTS OF \$2,046.00** (\$976.00 for the April 5, 2011, deposition of Mr. Fletcher, two witness subpoenas at \$35.00 each issued by the OPC for the hearing, and \$1,000.00 for the hearing reporter's fee) for his conduct in this matter. If either party orders a transcript of the hearing for appeal use, Mr. Fletcher's costs shall be reduced by \$500.00.

The suspension shall become effective on the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court. The fine and costs assessed herein, totaling \$2,046.00, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct with thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: 

James S. Dunham, Chair, Panel B

Date: September 29, 2011