



Dec. 12, 2018

Board of Disciplinary Appeals

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

IN THE MATTER OF	§	
ERIC D. DIXON	§	CAUSE NO. <u>61385</u>
STATE BAR CARD NO. 05906020	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Eric D. Dixon (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 2108 W. Aspen, Portales, New Mexico 88130.

3. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, is a true and correct copy of a set of documents in the Dixon matter consisting of the Board Panel's Decision, Report and Recommendation dated August 13, 2018; Findings of Fact and Conclusions of Law of the Hearing Committee dated April 30, 2018; and the Specification of Charges dated September 27, 2017, relating to the matter entitled *In the Matter of Eric Dixon, Esq., Respondent, an Attorney licensed to practice before the Court of the State of New Mexico*, Disciplinary No. 09-2017-771 (Exhibit 1).

4. On or about November 9, 2018, an Order (Exhibit 2) was entered in the Supreme Court of the State of New Mexico, in No. S-1-SC-37204, in a matter styled: *In the Matter of Eric Dixon, an Attorney Suspended from the Practice of Law in the Courts of the State of New Mexico*, that states in pertinent part as follows:

. . . NOW, THEREFORE, IT IS ORDERED that the findings of fact of the disciplinary board are ACCEPTED as supported by substantial evidence, the conclusions of law of the disciplinary board are ADOPTED with the exception of the second sentence of Conclusion of Law E, and the disciplinary board's request to adopt its recommendation for discipline is GRANTED AS MODIFIED BY THIS ORDER;

IT IS FURTHER ORDERED that, pursuant to Rule 17-206(A)(3) NMRA, respondent, ERIC D. DIXON, shall be INDEFINITELY SUSPENDED from the practice of law, effective thirty (30) days from the date of this order, and for a period of time of no less than nine (9) months . . .

5. The Findings of Fact and Conclusions of Law of the Hearing Committee adopted by the Supreme Court of New Mexico found that Respondent violated the following Rules of Professional Conduct:

- a. Rule 16-101. Competence. Mr. Dixon was negligent in inadvertently filing suit for Jessie Aguilar. Mr. Dixon was negligent in his representation of Jessica Aguilar during the Federal Lawsuit by treating her as though she was the same person as the plaintiff Jessie Aguilar toward the end of those proceedings. Mr. Dixon was negligent in stipulating to the dismissal of Jessie Aguilar Federal Lawsuit.
- b. Rule 16-301. Meritorious Claims and Contentions. Mr. Dixon negligently filed a frivolous lawsuit for a plaintiff, Jessie Aguilar that did not exist.
- c. Rule 16-303. Candor Toward the Tribunal. Mr. Dixon knowingly made a false statement of fact to the court during the State Lawsuit.
- d. Rule 18-801. Bar admission and disciplinary matters. Mr. Dixon knowingly made a false statement of fact during this disciplinary matter.
- e. Rule 16-804. Misconduct. Mr. Dixon engaged in conduct involving dishonesty, deceit, and misrepresentation.

6. Certified copies of the Board Panel's Decision, Report and Recommendation dated August 13, 2018; Findings of Fact and Conclusions of Law of the Hearing Committee dated April 30, 2018; and the Specification of Charges dated September 27, 2017, and Order are attached hereto as Petitioner's Exhibits 1 and 2, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 and 2 at the time of the hearing in this case.

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

Respectfully submitted,

Linda A. Acevedo
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Amanda M. Kates
Bar Card No. 05906020
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 Eric D. Dixon, by personal service.

Eric D. Dixon
301 S. Avenue A
Portales, New Mexico 88130

A handwritten signature in black ink, appearing to read 'AMANDA M. KATES', written over a horizontal line.

Amanda M. Kates

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

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

Rule 1.02. General Powers

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

Rule 1.03. Additional Rules in Disciplinary Matters

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

Rule 1.04. Appointment of Panels

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

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

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

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

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

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

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

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

- (4) Exceptions.

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

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

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

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

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

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

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

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

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

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

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

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

Rule 1.06. Service of Petition

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

Rule 1.07. Hearing Setting and Notice

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

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

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

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

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

Rule 1.08. Time to Answer

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

Rule 1.09. Pretrial Procedure

(a) Motions.

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

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

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

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

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

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

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

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

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

Rule 1.10. Decisions

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

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

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

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

Rule 1.11. Board of Disciplinary Appeals Opinions

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

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

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

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

Rule 1.12. BODA Work Product and Drafts

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

Rule 1.13. Record Retention

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

Rule 1.14. Costs of Reproduction of Records

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

Rule 1.15. Publication of These Rules

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

II. ETHICAL CONSIDERATIONS

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

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

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

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

Rule 2.02. Confidentiality

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

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

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

Rule 2.03. Disqualification and Recusal of BODA Members

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

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

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

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

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

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

Rule 3.02. Record on Appeal

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

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

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

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

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

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

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

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

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

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

Rule 4.02. Record on Appeal

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

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

(c) Responsibility for Filing Record.

(1) Clerk's Record.

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

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

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

(2) Reporter's Record.

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

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

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

(d) Preparation of Clerk's Record.

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

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

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

(ii) start each document on a new page;

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

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

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

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

(vii) certify the clerk's record.

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

(3) The table of contents must:

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

(ii) be double-spaced;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹ So in original.

Rule 4.03. Time to File Record

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

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

(b) If No Record Filed.

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

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

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

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

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

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

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

Rule 4.04. Copies of the Record

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

Rule 4.05. Requisites of Briefs

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

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

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

(c) Contents. Briefs must contain:

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

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

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

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

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

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

failure to timely file a brief;

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

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

Rule 4.06. Oral Argument

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

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

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

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

Rule 4.07. Decision and Judgment

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

- (1) affirm in whole or in part the decision of the evidentiary panel;
- (2) modify the panel's findings and affirm the findings as modified;
- (3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or
- (4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

- (i) the panel that entered the findings; or
- (ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

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

Rule 4.08. Appointment of Statewide Grievance Committee

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

Rule 4.09. Involuntary Dismissal

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

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

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

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

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

Rule 5.02. Hearing

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

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

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

Rule 6.02. Interlocutory Suspension

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

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

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

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

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

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

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

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

Rule 7.02. Order to Show Cause

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

Rule 7.03. Attorney's Response

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

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

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

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

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

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

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

Rule 8.02. Petition and Answer

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

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

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

Rule 8.03. Discovery

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

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

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

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

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

Rule 8.04. Ability to Compel Attendance

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

Rule 8.05. Respondent's Right to Counsel

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

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

Rule 8.06. Hearing

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

Rule 8.07. Notice of Decision

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

Rule 8.08. Confidentiality

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

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

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

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

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

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

Rule 9.02. Discovery

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

Rule 9.03. Physical or Mental Examinations

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

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

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

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

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

Rule 9.04. Judgment

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

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

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

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

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



The Disciplinary Board

AN AGENCY OF THE SUPREME COURT OF THE STATE OF NEW MEXICO

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ALBUQUERQUE, NM 87102

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AFFIDAVIT OF AUTHENTICITY

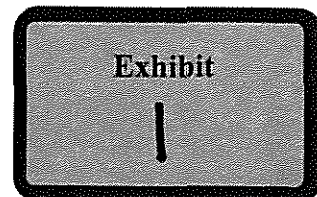
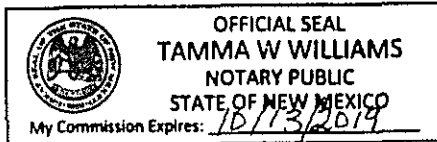
State of New Mexico)
) ss.
County of Bernalillo)

I, William D. Slease, Chief Disciplinary Counsel for the New Mexico Disciplinary Board, upon my oath and based upon my own personal knowledge and under the penalty of perjury under the laws of the State of New Mexico, do hereby declare and affirm that the following documents, attached hereto, are authentic copies of those documents held in the Office of Disciplinary Counsel for the Disciplinary Board of the New Mexico Supreme Court:

- In The Matter of Eric Dixon
- Disciplinary No.: 09-2017-771
- 08/13/2018 Board Panel's Decision, Report and Recommendation;
- 04/30/2018 Findings of Fact and Conclusions of Law of the Hearing Committee; and
- 09/27/2017 Specification of Charges

WILLIAM D. SLEASE
Chief Disciplinary Counsel

Subscribed and sworn to before me this 26t day of November, 2018, by William D. Slease.

Notary Public

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF THE STATE OF NEW MEXICO**

In the Matter of

Disciplinary No. 09-2017-771

Eric Dixon, Esq.,

**Respondent, an Attorney licensed to practice before the
Courts of the State of New Mexico**

BOARD PANEL'S DECISION, REPORT AND RECOMMENDATION

THIS MATTER having come before the Panel (David C. Kramer, Irene Mirabal-Counts, and Alex C. Walker) upon referral by the Chair, and the Panel having reviewed the record in this matter (including the transcript and record of the hearing held before the Hearing Committee), and having heard oral argument by Respondent and Disciplinary Counsel on June 22, 2018, and being otherwise fully advised, the Panel therefore hereby:

FINDS THAT:

- 1) The Disciplinary Panel ("Panel") has been duly appointed to hear this matter and has jurisdiction over the parties and the subject matter of the action.
- 2) Respondent concedes, and the Panel agrees, that Respondent's challenges to the composition of the Hearing Committee are now moot. This resolves Respondent's Issue No. 1 in his Briefing.
- 3) The Panel defers to the Hearing Committee's factual findings where those findings are supported by substantial evidence. *In Re Bristol*, 2006-NMSC-041, ¶ 16, 140 N.M. 317.
- 4) The record contains substantial evidence to support the Hearing Committee's Findings of Fact ("FOF") 1-11, 14-31, 33-37, 39-50, 51(d), 51(e), 52-59, and 60-61,

which are hereby adopted and incorporated by reference as though fully set forth herein. Those FOF may be addressed in more detail below as necessary to respond to arguments of the parties.

5) The record contains substantial evidence to support the Hearing Committee's Finding of Fact 38. While not addressed by the Hearing Committee, the record demonstrates – and this Disciplinary Panel further finds that:

a. “Mr. Dixon had not “lost” contact with Jessie Aguilar, but indeed never had any contact with Jessie Aguilar about the subject matter of the Federal Lawsuit or the Federal Lawsuit itself.”

6) The Hearing Committee's Findings of Fact 12 and 13 are not supported by substantial evidence, as they refer to events alleged to have occurred in 2014. The evidence in the record indicates that these events are actually alleged to have occurred in 2013. Accordingly, the Disciplinary Panel makes the following findings of fact in lieu of Facts 12 and 13:

a. “The TCN's prepared by Mr. Dixon for the Nine Male Inmates all relate to a pepper ball incident alleged to have occurred on September 30, 2013.”

b. “The TCN prepared by Mr. Dixon for Jessica Aguilar relates to a non-consensual strip and body cavity search alleged to have occurred on September 25, 2013.”

7) The record does not contain substantial evidence to support the Hearing Committee's Findings of Fact 32, 51(b), and 63, which are rejected in their entirety.

8) The record does not contain substantial evidence to support the Hearing Committee's Finding of Fact 51(a) insofar as it finds that Jessie Aguilar was included in the

Federal Lawsuit “by some mistake or oversight.” The Record indicates that naming Jessie Aguilar as a Plaintiff in the Federal Lawsuit was intentional, as evidenced by the fact that Jessie Aguilar was named as a Plaintiff in the Federal Lawsuit, was identified by Mr. Dixon as a witness to “testify as to the incident and his damages” in the September 5, 2014 Joint Status Report and Provisional Discovery Plan, continued to be identified as a named plaintiff in the proposed Amended Complaint, was identified by Mr. Dixon on November 7, 2014 as one of the plaintiffs with whom he had “lost contact,” and continued as a named Plaintiff until dismissed on June 16, 2015. Accordingly, the Disciplinary Panel instead finds as follows based on the record:

a. “Mr. Dixon included a Jessie Aguilar in the Federal Lawsuit.”

- 9) The record does not contain substantial evidence to support the Hearing Committee’s Finding of Fact 51(c) insofar as it finds that Jessie Aguilar was included in the Federal Lawsuit “by some mistake or oversight.” The Record indicates that naming Jessie Aguilar as a Plaintiff in the Federal Lawsuit was intentional, as evidenced by the fact that Jessie Aguilar was named as a Plaintiff in the Federal Lawsuit, was identified by Mr. Dixon as a witness to “testify as to the incident and his damages” in the September 5, 2014 Joint Status Report and Provisional Discovery Plan, continued to be identified as a named plaintiff in the proposed Amended Complaint, was identified by Mr. Dixon on November 7, 2014 as one of the plaintiffs with whom he had “lost contact,” and continued as a named Plaintiff until dismissed June 16, 2015. Accordingly, the Disciplinary Panel instead finds as follows based on the record:

- a. "At some point by early 2015, Mr. Dixon decided to assert Jessica Aguilar's claims to the defense counsel as a part of settlement negotiations in the Federal Lawsuit;"

10) The record does not contain substantial evidence to support the introductory phrase of Hearing Committee's Finding of Fact 51(f), as the record does not contain substantial evidence that Mr. Dixon dismissed the claims of Jessie Aguilar in the Federal Lawsuit without money being paid to Jessica Aguilar because of pressure from pending deadlines in the Federal Lawsuit or a belief that dismissal would not prejudice Jessica Aguilar in another lawsuit. Accordingly, Disciplinary Panel instead finds only as follows based on the record:

- a. "Mr. Dixon stipulated to dismissal with prejudice of the Federal Lawsuit, including the claims of "Jessie Aguilar", without any settlement monies being paid to Jessica Aguilar."

11) The record does not contain substantial evidence to support the Hearing Committee's Findings of Fact 62 as stated, insofar as it does not accurately report Mr. Dixon's statement to the New Mexico Disciplinary Board , does not make it clear that a Notice of Deposition for Jessie Aguilar was served on Mr. Dixon directly via e-mail on January 20, 2015, and does not address the possibility of constructive notice of the deposition request. Accordingly, the Disciplinary Panel instead finds as follows based on the record:

- a. "On April 14, 2017, in an email to the New Mexico Disciplinary Board, Mr. Dixon stated: 'Neither the deposition of Jesse Aguilar or Jessica Aguilar was ever notice[d] or requested.' This is untrue. A Notice of Deposition for

Jessie Aguilar was issued/served on Respondent on via e-mail on January 20, 2015. Mr. Dixon had constructive notice, if not actual notice, of Jessie Aguilar's deposition having been noticed when he made this statement to the Disciplinary Board."

12) The Panel may make additional findings where it can explain the basis therefore, and renders this decision based upon the record, including additional findings. The Disciplinary Panel makes the following additional findings of fact based on the record:

- a. "No male by the name of Jessie, Jesse or Jessy Aguilar or any other spelling of that name was housed at the RCDC on September 30, 2013."
- b. "Mr. Dixon never met or spoke with Jessie Aguilar about the Civil Complaint filed on his behalf, and was never asked by Jessie Aguilar to represent him in connection with claims asserted on his behalf in the Federal Lawsuit."
- c. "The claims filed on behalf of Jessie Aguilar based on New Mexico law lacked a good faith basis, as no notice was ever provided on behalf of Jessie Aguilar in accordance with the New Mexico Tort Claims Act."
- d. "The Motion to Amend did not reference any desire or intent to add Jessica Aguilar as a named Plaintiff."
- e. "The proposed FAC attached to the Motion to Amend did not propose to change the caption so as to include Jessica Aguilar as a named Plaintiff."

- 13) Respondent contends that Finding of Fact (“FOF”) No. 24 of the Hearing Committee is not supported by substantial evidence.
- 14) The Panel finds that FOF No. 24 was supported by substantial evidence, including the finding that Respondent’s assertion that a Ray Montano told him about a male inmate named Jessie Aguilar to be “not credible” given the totality of circumstances of this case.
- 15) Respondent asserts that the Hearing Committee’s Conclusion of Law (“COL”) Number 7 is unsupported.
- 16) As noted above, the Panel finds that FOF 51(a) and (b) are not supported by substantial evidence, even under a deferential standard of review.
- 17) Because FOF 51(a) and (b) are unsupported, the panel must review the various bases for COL 7.
- 18) The Panel finds that COL 7 is supported by the FOF in this case, including FOF 51 subparts (c) through (f), as amended revised by the Panel.
- 19) FOF 53 is supported by substantial evidence, and that FOF expressly outlines that Respondent knew or should have known that he was risking substantial prejudice to a Jessica Aguilar by agreeing to dismissal of claims by a “Jessica Aguilar.”
- 20) Respondent attacks FOF 35 on the grounds that he claims there could not be a basis for the Committee to have found any intent to mislead.
- 21) FOF 35 states that **“There is clear and convincing evidence that [Respondent] never intended for the Proposed FAC to bring Ms. [Jessica] Aguilar into the Federal Lawsuit.”**
- 22) The Panel finds substantial evidence supports FOF 35.

And therefore the Panel makes the following Conclusions of Law, and

Recommendations:

- A. The Disciplinary Panel reviews the Hearing Committee's legal conclusions and recommendations for discipline *de novo*. The Disciplinary Panel adopts and incorporates by reference the Hearing Committee's Conclusions of Law 1-5, 7-8, 9(e), and 10-11.
- B. Respondent argues that the Hearing Committee rejected the "sole claim" of Disciplinary Counsel that he brought a case for a Jessica Aguilar and thus COL 7 fails as a matter of law.
- C. Upon review of the entire record, the Panel finds that COL 7 is supported by those portions of FOF 51 as supplemented by the Panel, and FOF 52-54 which relate to a fundamental error by Respondent relating to Jessie Aguilar versus Jessica Aguilar and that a competent attorney would know his or her own client.
- D. Respondent challenges COL 6. The Disciplinary Panel does not adopt the Hearing Committee's Conclusion of Law 6 as stated, and instead concludes as follows:
 - o **"There was not a good faith basis for bringing a claim for a male "Jessie" or "Jesse" Aguilar."**
- E. The Disciplinary Panel does not adopt the Hearing Committee's Conclusion of Law 9(a) as stated, and instead concludes as follows:
 - o **"Rule 16-101. Competence. Mr. Dixon failed to provide competent representation to Jessica Aguilar by, at a minimum, treating her as though she was the same person as the plaintiff Jessie Aguilar. Mr. Dixon also failed to provide competent representation to Jessie Aguilar, as evidenced by**

bringing suit on his behalf without ever speaking with him, and then by dismissing his claims with prejudice without first consulting him.”

F. The Disciplinary Panel does not agree with the Hearing Committee’s Conclusion of Law 9(b) as stated, and instead concludes as follows:

- **“Rule 16-301. Meritorious Claims and Contentions. Mr. Dixon filed frivolous claims on behalf of Jessie Aguilar, an individual that Mr. Dixon never spoke with before filing suit and who was not even incarcerated at RCDC on the date in question.”**

G. The Disciplinary Panel does not adopt the Hearing Committee’s Conclusion of Law 9(c) as stated, and instead concludes as follows:

- **“Rule 16-303. Candor Toward the Tribunal. Mr. Dixon knowingly made a false statement of fact to the court during the State Lawsuit when he represented that he had filed a Motion to Amend the Federal Lawsuit to bring Jessica Aguilar in as a plaintiff.”**

H. The Disciplinary Panel does not adopt the Hearing Committee’s Conclusion of Law 9(d) as stated, and instead concludes as follows:

- **“Rule 18-801. Bar admission and disciplinary matters. Mr. Dixon knowingly made a false statement of fact during this disciplinary matter when he stated that opposing counsel in the Federal Lawsuit had not noticed or requested the deposition of Jesse Aguilar or Jessica Aguilar.”**

I. Respondent argues for minimal discipline, while Disciplinary Counsel seeks a two-year actual suspension. The Hearing Committee recommended a six (6) month suspension which would be deferred if Respondent “forthrightly acknowledged” the violations.

After considering all of the mitigating and aggravating factors cited by the Hearing Committee, and the entire record, the Panel RECOMMENDS that:

- A) The Supreme Court approve and impose an actual suspension of one (1) year upon Respondent, and;
- B) Respondent be required to take and pass the Multistate Professional Responsibility Examination (“MPRE”) during the period of suspension; and
- C) Respondent should be ordered to pay the costs of this proceeding.

IT IS SO FOUND AND RECOMMENDED.

Panel,

/s David C. Kramer

David C. Kramer

/s Irene Mirabal-Counts

Irene Mirabal-Counts

/s Alex C. Walker

Alex C. Walker

CERTIFICATE OF SERVICE:

The foregoing pleading was served
via e-mail or U.S. Mail on this
13th day of August, 2018, upon:

Mr. Gary Mitchell,
Counsel for Respondent

Ms. Jane Gagne via e-mail only
Mr. Bill Slease via e-mail only

/s/ David C. Kramer

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF THE STATE OF NEW MEXICO

In the Matter of
ERIC D. DIXON, ESQ.
An Attorney Licensed to
Practice Law Before the Courts
of the State of New Mexico

DISCIPLINARY NO. 09-2017-771

FINDINGS OF FACT AND CONCLUSIONS
OF LAW OF THE HEARING COMMITTEE

The Hearing Committee consisting of Andrew J. Cloutier, Justin S. Raines, and Betty J. Egbom hereby makes the following findings of fact, conclusions of law and recommended discipline resulting from the hearing in this matter occurring on February 26 – 27, 2018:

FINDINGS OF FACT

1. Respondent Eric D. Dixon, Esq. ("Mr. Dixon") was first licensed to practice law in the State of New Mexico in 1985 and, at all pertinent times, was an attorney in good standing to practice law in New Mexico.
2. Mr. Dixon has been a sole practitioner since 1990.
3. As part of his practice, Mr. Dixon represents criminal defendants and does civil rights work. At all times relevant to these proceedings, Mr. Dixon's only employee was Pamela Preston, a legal assistant who is not a paralegal.
4. Mr. Dixon is one of very few attorneys in eastern New Mexico who represents detention center inmates in civil rights actions, sometimes at little to no remuneration for himself.
5. In August and September 2013, there were a series of incidents involving pepper ball spray shootings and other possibly excessive forms of discipline and/or

violence visited on male prisoners at the Roosevelt County Detention Center ("RCDC") by RCDC personnel.

6. Additionally, during the same period but on different dates, a female inmate, Jessica Aguilar, was subjected to a nonconsensual strip and body cavity search by RCDC personnel.

7. In October 2013, Respondent entered into a contingency fee agreement ("CFA") with Jessica Aguilar.

8. Also, in October 2013, Respondent admitted a Tort Claims Notice ("TCN") to the Roosevelt County Clerk on behalf of Jessica Aguilar alleging that she had been subjected to an illegal nonconsensual strip search.

9. Also, in October 2013, Respondent entered into Contingent Fee Agreements ("CFAs") with nine male inmates of RCDC: Erik Piña, Roy Montano, Bryon Williams, Nazario Ortega, Rudolfo Sotelo, Richard Sepulveda, Orlando Baeza, Joseph Medina, and Greg Marquez (collectively "the Nine Male Inmates").

10. Also, in October 2013, Respondent submitted various TCNs on behalf of the Nine Male Inmates relating to a pepper ball spray incident. During his investigation, Mr. Dixon identified RCDC employee James Andes as an officer who was allegedly responsible for one or more of the pepper ball incidents.

11. Officer Andes was not involved in the strip search and body cavity search of Jessica Aguilar, but rather, two unnamed female RCDC employees were involved.¹

¹ As to Findings of Fact 5, 6, and 11, the Hearing Committee does not intend those findings to be construed more broadly than that, at a minimum, Mr. Dixon received sufficient information on which he could form a good faith belief that the events occurred and that information was more than a sufficient basis for him to file the TCNs and lawsuit(s) on behalf of his clients.

12. The TCN's prepared by Mr. Dixon for the Nine Male Inmates all relate to a pepper ball incident alleged to have occurred on September 30, 2014.

13. The TCN prepared by Mr. Dixon for Jessica Aguilar relates to a non-consensual strip and body cavity search alleged to have occurred on September 25, 2014.

14. Mr. Dixon did not obtain a CFA from any male Jesse or Jessie Aguilar or file a TCN for a Jesse or Jessie Aguilar related to a pepper ball spray incident.

15. On or around October 9, 2013, RCDC established a new attorney visitation policy, which required 24-hours' notice for an attorney to visit a client and restricted visits to weekdays and only during business hours.

16. The RCDC policy on attorney visitation made it more difficult for Mr. Dixon and other attorneys to visit their clients at RCDC.

17. On October 14, 2013, Mr. Dixon filed a TCN with the Roosevelt County Clerk regarding restrictions on attorney visitation on behalf of Erik Piña, Roy Montano, Bryon Williams, Nazario Ortega, Rudolfo Sotelo, and Richard Sepulveda.

18. At no cost or fee to the Plaintiffs, Mr. Dixon filed a suit in the Ninth Judicial District Court for Roosevelt County challenging the legality of the attorney visitation policy. One of the Plaintiffs to that lawsuit was "Jessie Aguilar". Due to Mr. Dixon's efforts, the Court in that lawsuit ultimately ruled that Roosevelt County's October 9, 2014 attorney visitation policy at RCDC was unconstitutional.

19. At the time of the pepper ball incidents, RCDC housed many male inmates from Eddy County, New Mexico.

20. RCDC regularly housed inmates from other jurisdictions and inmates housed at RCDC often were moved to detention centers in other jurisdictions in New Mexico and West Texas.

21. Mr. Dixon obtained a video of one of the pepper ball incidents occurring in the day room in Pod 11 at the RCDC. At the time of that incident, there were approximately 35 male detainees in the day room that were subjected to pepper ball spray.

22. Mr. Dixon had represented Jessica Aguilar, a Portales resident, on one occasion prior to 2013 in an automobile accident matter.

23. Mr. Dixon had represented Roy Montano and members of his family for many years prior to 2013. Mr. Dixon testified that Mr. Montano told him that he had a nephew named Jessie Aguilar who was subjected to the pepper ball incidents and claimed at the hearing in this matter that he trusted Mr. Montano and was not overly concerned that he did not have a CFA from a Mr. Jessie Aguilar.

24. Mr. Dixon had numerous opportunities, including in these proceedings, where it would have been to his advantage to raise the matter of Roy Montano telling him about a nephew, Jessie Aguilar, prior to Mr. Montano's death in May 2017, but Mr. Dixon did not raise that matter until after Mr. Montano's death. The Committee finds that the allegation of Mr. Montano telling Mr. Dixon about a male Jessie Aguilar to be not credible.

25. On April 22, 2014, Respondent filed in Federal Court a *Civil Complaint for Federal Civil Rights Violations and Violation of the New Mexico Tort Claims Act*, styled *Pena, et al. v. Andes, et al.* ("Initial Complaint"), No. 14-CV-00374-SMV-CG, on behalf of the following ten inmates: Erik Piña; Roy Montano; Byron Williams; Nazario Ortega;

Rodolfo Sotelo, Jr.; Richard Sepulveda; Orlando Baez; Joseph Medina; Greg Marquez; and Jessie Aguilar (the "Federal Lawsuit").

26. The Federal Lawsuit pertains to pepper-ball incidents.

27. The Original Complaint in the Federal Lawsuit only contains particularized allegations of harm against Plaintiffs Erik Piña and Byron Williams as to injuries suffered during the pepper ball incidents.

28. As a civil rights lawyer, at all pertinent times, Mr. Dixon was familiar with the more demanding pleading standards imposed by the *Twombly/Iqbal* line of cases to survive a motion to dismiss in federal court.

29. On October 20, 2014, Mr. Dixon filed a motion seeking to amend his Complaint in the Federal Lawsuit and attached a proposed First Amended Complaint ("Proposed FAC").

30. The Proposed FAC made particularized allegations regarding the pepper ball incidents on behalf of Plaintiffs Sepulveda, Baez, Encinias, Sotelo, Piña, and Williams.

31. The Proposed FAC also included a new allegation that "[a]ll Plaintiffs were then required to submit to humiliating strip searches."

32. The Proposed FAC contained no factual assertions related to the allegations that Mr. Dixon asserted in the TCN for Jessica Aguilar

33. The court in the Federal Lawsuit never gave leave to file the Proposed FAC.

34. Mr. Dixon had information that, after one of the pepper-ball incidents, male prisoners in one pod at RCDC were subjected to strip searches as a group.

35. There is clear and convincing evidence that Mr. Dixon never intended for the Proposed FAC to bring Ms. Aguilar into the Federal Lawsuit.

36. In both the Initial Disclosures and his portion of the Joint Status Report, Mr. Dixon included boilerplate language about the testimony of "Jessie Aguilar" that is inconsistent with Mr. Dixon's knowledge of the particularized claims of Jessica Aguilar, which the TCN's show were distinct from the claims related to pepper ball incidents at RCDC.

37. The Joint Status Report, prepared and filed by all counsel in the Federal Lawsuit, uses masculine pronouns when referring to "Jessie Aguilar".

38. On November 7, 2014, Mr. Dixon e-mailed opposing counsel in the Federal Lawsuit that he had lost contact with five of his clients, including Jessie Aguilar, and indicates that all those clients were RCDC inmates from Eddy County.

39. On November 20, 2014, Pamela Preston of Mr. Dixon's office faxed a Medical Release for Jessica Aguilar (signed "Jessie Aguilar") to opposing counsel in the Federal Lawsuit. Ms. Preston signed a transmittal memorandum to defense counsel on Mr. Dixon's behalf.

40. There is no evidence that Mr. Dixon knew about Jessica Aguilar's Medical Release in 2014.

41. Even if Mr. Dixon had knowledge of Jessica Aguilar's Medical Release, it would not signify that he understood Ms. Aguilar to be a party to the Federal Lawsuit as Ms. Aguilar had filed a TCN, and it is not uncommon for medical releases to be sought from parties that filed a TCN absent a lawsuit.

42. In late 2014 and early 2015, Mr. Dixon's elderly parents needed considerable assistance from him, his father suffered from Alzheimer's disease and lung cancer and was near death (he died in late February 2015), and he travelled extensively from New Mexico to Houston, Texas to assist his parents.

43. On January 26, 2015, Mr. Dixon e-mailed opposing counsel in the Federal Lawsuit the addresses of the Plaintiffs and lists "Jessica Aguilar" with a Portales, New Mexico address and indicates that Ms. Jessica Aguilar is available for deposition "here locally."

44. In February 2015, discovery was due the Defendants from the Plaintiffs to the Federal Lawsuit. Pamela Preston, who is related to Jessica Aguilar by marriage, was attempting to assist Mr. Dixon and had Ms. Aguilar complete the discovery addressed to Jessie Aguilar and verify those responses.

45. No evidence was presented that shows that Mr. Dixon reviewed the "Jessie Aguilar" responses before service on defense counsel. Unlike the other discovery responses from Plaintiffs in the federal lawsuit, Mr. Dixon did not personally sign the responses from Jessica Aguilar.

46. The discovery responses from Jessica Aguilar discuss "injury to eyes" from the pepper-ball incidents but do not discuss a non-consensual strip and/or body cavity search.

47. On the discovery responses, the case caption was changed from "Jessie Aguilar" to "Jessica Aguilar" and those changes appear in a few subsequent pleadings.

48. Mr. Dixon generally prepares pleadings and discovery responses for clients without assistance from Ms. Preston.

49. Ms. Preston changed the case caption from "Jessie" to "Jessica" Aguilar in the Certificate of Service for the discovery responses from "Jessie Aguilar."

50. Mr. Dixon's use of copy and paste functionality in a word processing program is the most likely explanation for subsequent appearances of "Jessica Aguilar" in the case caption of the Federal Lawsuit in pleadings filed by Mr. Dixon. Each subsequent pleading in the Federal Lawsuit used a different font than Mr. Dixon typically uses in the pleadings that he personally prepared.

51. While it is difficult to ascertain with certainty, by a preponderance of the evidence, the Committee finds the following with respect to the Federal Lawsuit and the inclusion of Jessie Aguilar in that case:

- a. Mr. Dixon included a Jessie Aguilar in the Federal Lawsuit by some mistake or oversight;
- b. If Mr. Dixon had intended for the claims of Jessica Aguilar related to involuntary strip and/or body cavity searches to be included in the Federal Lawsuit, he would have described the incidents unique to Jessica Aguilar with a degree of specificity that is missing from both the Initial Complaint or the Proposed FAC;
- c. At some point by early 2015, for reasons that the Committee does not understand, Mr. Dixon realized his mistake in listing Jessie Aguilar in the Federal Lawsuit but decided to assert Jessica Aguilar's claims to the defense counsel as a part of settlement negotiations in the Federal Lawsuit;

- d. Mr. Dixon attempted to negotiate a settlement for Jessica Aguilar, defense counsel was aware that his clients were making an offer to Jessica Aguilar, and Ms. Aguilar rejected a settlement offer of \$1,000;
- e. Mr. Dixon then asserted to defense counsel that there was no "Jessie Aguilar" and sought defendants' agreement, which was refused, that dismissal of "Jessie Aguilar" from the Federal Lawsuit would not prejudice Jessica Aguilar from filing a subsequent, state-law complaint on matters related to a humiliating "pelvic"; and,
- f. Apparently pressured by deadlines in the Federal Lawsuit and with some belief that it would not prejudice Jessica Aguilar's subsequent lawsuit over the matters covered in her TCN, Mr. Dixon stipulated to dismissal with prejudice of the Federal Lawsuit, including the claims of "Jessie Aguilar", without any settlement monies being paid to Jessica Aguilar.

52. Mr. Dixon would not have consented to dismissal with prejudice of "Jessie Aguilar" from the Federal Lawsuit without some good faith belief that Jessica Aguilar could assert the claims that were the subject of her TCN in a subsequent lawsuit.

53. Notwithstanding the foregoing Finding of Fact, Mr. Dixon, as a competent attorney, must have realized that his attempts to settle Jessica Aguilar's claims in the Federal Lawsuit and subsequently stipulating to the dismissal of prejudice of a non-existent "Jessie Aguilar" from the Federal Lawsuit might imperil a subsequent lawsuit by Jessica Aguilar related to the incidents that were the subject to her TCN.

54. After dismissal of the Federal Lawsuit, on June 26, 2016, Mr. Dixon filed an action in the Ninth Judicial District Court for Roosevelt County for Jessica Aguilar alleging

state law claims related to an unlawful pelvic examination occurring while Ms. Aguilar was an inmate at RCDC (the "State Lawsuit").

55. Defendants in the State Lawsuit filed a motion seeking summary judgment based on the stipulated dismissal with prejudice of "Jessie Aguilar" from the Federal Lawsuit.

56. Shortly after a November 2, 2016 hearing, the court in the State Lawsuit granted the defendants summary judgment.

57. In responding to the summary judgment motion and in seeking reconsideration of the order granting that motion, Mr. Dixon never mentioned any conversation with Roy Montano in which Mr. Montano supposedly asked Mr. Dixon to represent a male nephew, Jessie Aguilar.

58. Mr. Dixon filed a Motion to Reconsider Grant of Summary Judgment Pursuant to Rule 1-059 E [sic] in the State Lawsuit on December 14, 2015, in which he again asserted that Jessie Aguilar and Jessica Aguilar are different people. Mr. Dixon filed Plaintiff Jessica Aguilar's Reply to "Defendant Roosevelt Counter's Response to Plaintiff's Motion to Reconsider Grant of Summary Judgment" ("Reply Brief") in the State Lawsuit on January 14, 2016, and stated, "Counsel always intended to file a law-suit for Jessica Aguilar and in fact filed a Motion to Amend the Complaint filed in Federal Court to bring Jessica Aguilar into the law-suit." (Emphasis added).

59. Contrary to Mr. Dixon's assertions in the Reply Brief, nothing within the October 10, 2014 Proposed FAC mentions the specific injuries that Jessica Aguilar was alleged to have suffered.

60. Mr. Dixon's Reply Brief also states, "Jessica Aguilar has never been known as Jesse Aguilar."

- a. Even though Ms. Aguilar has signed some documents as "Jessie," Mr. Dixon's purported lack of prior knowledge of this fact is credible.
- b. There is **not** clear and convincing evidence that this statement in the Reply Brief was *intentionally* misleading.

61. Mr. Dixon's Reply Brief made no mention of Roy Montano having a nephew named Jessie Aguilar.

62. On April 14, 2017, in an email to the New Mexico Disciplinary Board, Mr. Dixon stated that no deposition notice was ever provided for Jesse Aguilar in the Federal Lawsuit.

- a. This is untrue, and a notice had been issued, but there is **not** clear and convincing evidence that Mr. Dixon was aware of that notice when he made this statement.

63. It is more likely than not that, in 2014 and 2015, Mr. Dixon suffered some form of depression related to his care for his parents and their subsequent deaths while seeking to tend to his busy, solo practice.

CONCLUSIONS OF LAW

1. "Misrepresentation in any form is unacceptable conduct by an attorney." *In re Ruybalid*, 1994-NMSC-117, ¶ 7.

2. "Ordinarily when an attorney licensed by this Court engages in intentional misconduct involving dishonesty, he or she has been disbarred." *In re Lindsey*, 1991-NMSC-047, ¶ 9.

3. "For evidence to be clear and convincing, it must instantly tilt the scales in the affirmative when weighted against the evidence in opposition and the fact finder's mind is left with an abiding conviction that the evidence is true." *Matter of Doe*, 1984-NMSC-024, ¶ 9.

4. The primary purpose of attorney discipline is to protect the public. *In re Chavez*, 2013-NMSC-008, ¶ 26.

5. Mr. Dixon had a good faith basis for bringing a claim for a female Jessica Aguilar for the involuntary pelvic examination because all of the other plaintiffs were male detainees from POD 11, with the exception of Jessie Aguilar, involved in a pepper ball incident on a different day than the involuntary pelvic examination of Jessica Aguilar, but this finding is not dispositive.

6. There was not a good faith basis for bringing a claim for a male "Jessie" or "Jesse" Aguilar, but Mr. Dixon's inclusion of Jesse Aguilar in the Federal Complaint was inadvertent.

7. There is clear and convincing evidence that Mr. Dixon intentionally misled the court in the State Lawsuit in his Reply Brief in the State Lawsuit by asserting, "Counsel always intended to file a law-suit for Jessica Aguilar and in fact filed a Motion to Amend the Complaint filed in Federal Court to bring Jessica Aguilar into the law-suit." (emphasis added).

a. There is clear and convincing evidence that Mr. Dixon never intended for the Proposed FAC to bring Jessica Aguilar into the Federal Lawsuit although, at the end of the Federal Lawsuit, Mr. Dixon was attempting to settle Jessica Aguilar's claims as if she was the "Jessie" in the case.

8. Nonetheless, Mr. Dixon's motives were not completely selfish. He successfully obtained a permanent injunction against Roosevelt County for its conduct in restricting attorney access to prisoners at RCDC and some damages for some of the Nine Male Inmates.

9. Respondent has violated the following Rules of Professional Conduct:

a. *Rule 16-101. Competence.* Mr. Dixon was negligent in inadvertently filing suit for Jessie Aguilar. Mr. Dixon was negligent in his representation of Jessica Aguilar during the Federal Lawsuit by treating her as though she was the same person as the plaintiff Jessie Aguilar toward the end of those proceedings. Mr. Dixon was negligent in stipulating to the dismissal of Jessie Aguilar Federal Lawsuit.

b. *Rule 16-301. Meritorious Claims and Contentions.* Mr. Dixon negligently filed a frivolous lawsuit for a plaintiff, Jessie Aguilar, that did not exist.

c. *Rule 16-303. Candor Toward the Tribunal.* Mr. Dixon knowingly made a false statement of fact to the court during the State Lawsuit.

d. *Rule 18-801. Bar admission and disciplinary matters.* Mr. Dixon knowingly made a false statement of fact during this disciplinary matter.

e. *Rule 16-804. Misconduct.* Mr. Dixon engaged in conduct involving dishonesty, deceit, and misrepresentation. Mr. Dixon engaged in conduct prejudicial to the administration of justice.

10. There are aggravating factors:

a. Respondent has a prior disciplinary offense for which he received a public censure.

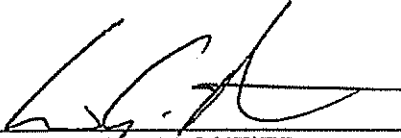
- b. Respondent had a dishonest motive.
- c. Respondent has refused to acknowledge the full extent of the wrongful nature of his conduct.
- d. During the disciplinary process, Respondent submitted false evidence and false statements.
- e. Respondent has substantial experience practicing law.

11. There are mitigating factors:

- a. Respondent cooperated in the disciplinary proceeding.
- b. Mr. Dixon's parents were in ill health during this period and died within eight months of each other. Mr. Dixon's father had terminal cancer along with Alzheimer's disease. Mr. Dixon had difficulties managing his cases as a result. Mr. Dixon's credible description of his state of mind at the time suggest that he may have been suffering from some sort of depression but no evidence of any diagnosis of depression was presented.
- c. Mr. Dixon has spent years representing unpopular and poor clients in New Mexico, often without compensation. He is one of the few attorneys in Eastern New Mexico that is willing or able to undertake public interest litigation such as conditions in the detention centers.
- d. Pecuniary motives did not underlie Mr. Dixon's violations.
- e. Mr. Dixon's ability to effectively communicate with his clients was hindered by an unconstitutional policy adopted regarding attorney visitation at RCDC.

RECOMMENDED DISCIPLINE

1. Respondent should be suspended for a minimum of six (6) months. Should Respondent forthrightly acknowledge his violations, the Committee would recommend deferral of the suspension if Mr. Dixon has no further disciplinary violations for a period of three (3) years.
2. Mr. Dixon's discipline and, if applicable, both the terms of any suspension and his acknowledgement of his violations should be published in the New Mexico Bar Bulletin.
3. Respondent should be ordered to pay the costs of this proceeding.



ANDREW J. CLOUTIER
Chair of the Hearing Committee
Date: 4/30/2018

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Findings of Fact & Conclusions of Law of the Hearing Committee was e-mailed to the following parties on this 30th day of April, 2018:

Gary C. Mitchell, Esq.
gmitchell@zianet.com

Attorney for Respondent

Justin S. Raines, Esq.
justin@mccormicklawfirm.net


Hearing Committee Member

Jane Gagne, Esq.
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Disciplinary Counsel

Betty J. Egbom
begbom@gmail.com

Hearing Committee Member



ANDREW J. CLOUTIER
Chair of the Hearing Committee

**BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF THE STATE OF NEW MEXICO**

In the Matter of

ERIC D. DIXON, ESQ.

DISCIPLINARY NO. 09-2017-771

An Attorney Licensed to
Practice Law Before the Courts
of the State of New Mexico

SPECIFICATION OF CHARGES

1. Rule 17-105(B)(3)(d) NMRA of the Rules Governing Discipline empowers counsel for the Disciplinary Board to file a Specification of Charges against an attorney with the Disciplinary Board.
2. Eric Dixon, hereinafter "Respondent," is an attorney currently licensed to practice law before the courts of the State of New Mexico; he was admitted on April 18, 1985.
3. The factual allegations set forth in this *Specification of Charges* state acts of professional misconduct in violation of Rules 16-101; 16-103; 16-301; 16-303; 16-801; and 16-804 NMRA.
4. Pursuant to Rule 17-309(A) NMRA of the Rules Governing Discipline, cause exists to conduct a hearing on the following charges so that the Disciplinary Board and the Supreme Court can determine whether further action is appropriate.

5. In October 2013, Respondent entered into ten Contingency Fee Agreements (“CFA”) with ten inmates of the Roosevelt County Detention Center (“RCDC”): Erik Piña; Roy Montano; Bryon Williams; Nazario Ortega; Rudolfo Sotelo; Richard Sepulveda; Orlando Baeza; Joseph Medina; Greg Marquez; and Jessica Aguilar, who was the only female of the group.
6. In October 2013, Respondent submitted to the Roosevelt County Clerk five separate Tort Claims Notices (“TCN”) on behalf of all the inmates listed above. As to the male inmates, their TCNs alleged that they were sprayed by a pepper ball by RCDC officials. The TCN for “Jessica Aguilar” alleged that she had been subjected to a non-consensual and illegal strip search.
7. On April 22, 2014, Respondent filed in Federal Court a *Civil Complaint for Federal Civil Rights Violations and Violation of the New Mexico Tort Claims Act*, styled *Pena, et al. v. Andes, et al.* (“Initial Complaint”), No. 14-CV-00374-SMV-CG (“Federal Lawsuit”), on behalf of the following ten inmates: Erik Pena [*sic*]; Roy Montano; Byron Williams; Nazario Ortega; Rodolfo Sotelo, Jr.; Richard Sepulveda; Orlando Baez [*sic*]; Joseph Medina; Greg Marquez; and Jessie Aguilar.
8. Each of those named plaintiffs in the Federal Lawsuit were the inmates for whom Respondent had issued TCNs in October 2013, except that Respondent did not prepare or submit a TCN for the last-listed plaintiff, “Jessie Aguilar.”

9. Respondent had a TCN for “Jessica Aguilar.”
10. Respondent had no CFA with anyone named “Jessie Aguilar,” but did with “Jessica Aguilar.”
11. In investigating the inmates’ claims before he filed the Federal Lawsuit, Respondent met with all the named plaintiffs except he did not meet with a male “Jessie Aguilar.”
12. RCDC had no male named Jessie Aguilar, or Jessy, or Jesse, at any time between July 1, 2013 and November 30, 2013—the dates of the alleged pepper ball spray incidences or of the alleged body cavity search.
13. The Defendants were (1) an Officer with RCDC (“Andes”); and (2) the Board of Commissioners for Roosevelt County.
14. The *Initial Complaint* alleged that on September 26, 2013, Defendant Andes “fired at least five rounds of pepper balls” which hit and injured Plaintiffs Pena, Williams, and other unspecified Plaintiffs.
15. On October 10, 2014, Respondent filed a *Motion for Leave to File Amended Complaint*, with a proposed *First Amended Civil Complaint for Federal Civil Rights Violations and Violation of the New Mexico Tort Claims Act* (“*Proposed FAC*”) attached.
16. The *Proposed FAC* newly alleged four separate paint-ball incidences in August and September 2013. The *Proposed FAC* made allegations on behalf

of the following specifically named Plaintiffs: Sepulveda; Baez; Encinias; Sotelo; Pena; and Williams.

17. Paragraph 8 of the *Proposed FAC* included a new allegation, that “[a]ll Plaintiffs were then required to submit to humiliating strip searches.”
18. Respondent had not submitted any TCNs for alleged strip searches of the male plaintiffs.
19. Defense counsel opposed the *Proposed FAC*, and the Court never ruled on the *Motion for Leave to File Amended Complaint*.
20. Neither the *Initial Complaint* nor the *Proposed FAC* specifically mention the named Plaintiffs Baez, Medina, Marquez or Aguilar.
21. On September 12, 2014, Respondent’s office filed a *Certificate of Service for Plaintiff’s Initial Disclosures*; the caption names “Jessica Aguilar” instead of “Jessie Aguilar.”
22. On November 20, 2014, Respondent’s secretary faxed to P. Scott Eaton, Defendant’s counsel in the Federal Lawsuit, a medical release for Jessica Aguilar. Ms. Aguilar signed the release as “Jessie Aguilar.”
23. Ms. Aguilar has signed other documents outside of the Federal Lawsuit as “Jessie Aguilar,” including a pleading in the unrelated *State v. Jessica Aguilar*, No. M-44-FR-201600240.

24. Among the discovery requests that defense counsel in the Federal Lawsuit propounded on the Plaintiffs was a set of Interrogatories to Plaintiff Jessie Aguilar.
25. Jessica Aguilar answered the Interrogatories.
26. Included in Ms. Aguilar's Answers to Interrogatories was her statement that she had an "injury to eyes from pepper ball spray."
27. On February 18, 2015, Respondent caused to be filed a *Certificate of Service* of Jessica Aguilar's responses to Defendant James Andes' discovery requests. Respondent's signature was noted on the *Certificate of Service* as "/s/ Eric D. Dixon." The caption of the *Certificate of Service* names "Jessica Aguilar" and the body contains "Jessica Aguilar" four times.
28. On June 9, 2015, co-defense counsel James P. Barrett, Esq. filed a *Notice of Extensioin [sic] of Time to Submit the Pre-Trial Order*; Respondent joined in and approved the *Notice*. The body of the pleading refers to "Plaintiff Jessie Aguilar," and states:

Plaintiffs, with the exception of Jessie Aguilar, have reached settlements with Defendants.

Defendants have extended an offer of settlement to Plaintiff Jessie Aguilar through her attorney Eric Dixon. Mr. Dixon in in the process of trying to communicate with Ms. Aguilar. Additional time is needed for Mr. Dixon to communicate the offer with Ms. Aguilar. [Emphases added.]

29. Sometime around the end of May, Respondent agreed to dismiss Plaintiffs Supulveda, Marquez and Baez with prejudice, and with no other conditions of settlement, such as a monetary settlement.
30. Respondent could not find Supulveda, Marquez and Baez, and did not have their approvals to dismiss them with prejudice.
31. In an email to Mr. Barrett on June 11, 2015, Respondent stated:
- There is no Jessie Aguilar there is a Jessica Aguilar and her claim was not included in the complaint. I will agree to dismiss Jessie Aguilar with prejudice with the understanding that I can bring a law-suit in the name of Jessica Aguilar. She claims that her POD was shot with pepper balls around the same time. . . In addition, she was taken to the public health department by two jail guards and had a pelvic done while both guards viewed the procedure which was very humiliating to her.
32. Later on June 11, 2015, Mr. Barret emailed Respondent with a final monetary settlement offer for
- Jessie (Jessica) Aguilar's claim. . . . My client also cannot agree to your proposal to dismiss Jessie Aguilar so that you can re-file. It appears that Jessie and Jessica are one in [*sic*] the same.
33. On June 16, 2015, Respondent filed a Rule 41 Stipulation of Dismissal of claims of Plaintiff Jesse Aguilar, dismissing with prejudice all claims that were or could have been brought in the Federal Lawsuit.
34. On June 26, 2015, Respondent filed in the Ninth Judicial District Court a *Civil Complaint for Damages Under the New Mexico Tort Claims Act*, styled

Jessica Aguilar v. The Roosevelt County Board of County Commissioners, et al., No. D-911-CV-2015-00127 (“State Court Lawsuit”).

35. The State Court Lawsuit alleged that on or about September 26, 2013, Jessica Aguilar was subject to an illegal pelvic exam while a detainee at RCDC.
36. On November 12, 2015, the Court in the State Court Lawsuit granted the Defendants’ *Motion for Summary Judgment*, which had argued that Jessica Aguilar had been a Plaintiff in the Federal Lawsuit and had asserted, or could have asserted, the same claim.
37. In his *Response* to the *Motion*, Respondent claimed that Jessica Aguilar was a female, and Jessie Aguilar was a male.
38. At the hearing on November 2, 2015 on Defendants’ *Motion for Summary Judgment*, defense counsel pointed out during his argument that Jessica Aguilar had given a medical release and responses to discovery requests in the Federal Court Lawsuit; Respondent did not address the point during his argument.
39. On December 14, 2015, Respondent filed in the State Court Lawsuit a *Motion to Reconsider Grant of Summary Judgment Pursuant to Rule 1-059E* on the asserted basis that Jessica Aguilar was not the Jessie Aguilar of the Federal Lawsuit.

40. In his *Reply* to the *Motion to Reconsider*, Respondent for the first time addressed Ms. Aguilar's medical release and responses to discovery requests in the Federal Court Lawsuit:

Counsel [Respondent] anticipated filing a claim for Jessica Aguilar in the Federal law-suit. Thus, a [medical release] was signed by Jessica Aguilar and questions answered by Jessica Aguilar given [*sic*] in order not to delay the matter while pleadings were amended. When the Defendants agreed to settle all the claims of the Plaintiffs except Jessie Aguilar, it was believed that the better approach would be to dismiss the federal claim of Jessie Aguilar which had been inadvertently filed and then file a claim in State Court.

.....
Disclosure of health records for Jessica Aguilar along with the discovery answers does not raise "a host of new issues" as the Defendants claim. . . .Medical records are regularly exchanged between parties before litigation in order to facilitate timely settlement of the matter. This is the same reason that Ms. Aguilar provided additional information in order to facilitate a settlement without further litigation.

. . . . Jessica Aguilar is a female and Jesse Aguilar is a male.

41. In response to the disciplinary complaint in this matter, Respondent again asserted that Jessie Aguilar and Jessica Aguilar were not the same person, and wrote:

Mrs. Aguilar inadvertently and by mistake signed interrogatories addressed to Jesse [*sic*] Aguilar not realizing that they were addressed to Jesse [*sic*] Aguilar. This was an over-sight which I take full responsibility which was caused by having multiple claimants; whose whereabouts were often unknown and discovery that was seriously over-due at the time in Federal Court.

42. Later, Respondent's counsel, Gary Mitchell, again claimed that Jessie and Jessica were two different people, and stated:

Mr. Dixon had directed his assistant to attempt to locate [those plaintiffs who had left the area without any forwarding address] and then seek to draft answers to any interrogatories. . . .Mr. Dixon was extremely distraught during this period of time (his father was expected to die at any moment), and did not double check this work as he might otherwise have done in different and better circumstances.

43. In a deposition of Respondent on June 24, 2017 by disciplinary counsel, Respondent continued to assert that Jessica Aguilar was not a plaintiff in the Federal Lawsuit.
44. In the same deposition, Mr. Mitchell disclosed that *he* originated Respondent's claim of emotional distraction because of his parents' health; that is, Respondent never made the claim until his attorney suggested it.
45. At the time of filing of this Specification of Charges, the Defendant Roosevelt County Board of County Commissioners' in the State Court Lawsuit have pending a *Motion for Sanctions* based on Defendants' assertion that the Jessie Aguilar of the Federal Court Lawsuit is the same person as the Jessica Aguilar in the State Court Lawsuit.
46. At the hearing on September 20, 2017 on the *Motion for Sanctions*, Respondent raised for the first time the claim in that proceeding that his assistant filled out the Interrogatories and HIPAA Release for Jessica Aguilar without Respondent's knowledge because he was allegedly "very distracted" by his parents' health.
47. That claim contradicts Respondent's prior claim, *see* paragraph 40 *supra*.

48. "Jessie Aguilar" of the Federal Lawsuit was Jessica Aguilar.
49. Respondent has violated the following Rules of Professional Conduct:
- a. Rule 16-101, by failing to provide competent representation to a client;
 - b. Rule 16-301, by filing a frivolous lawsuit;
 - c. Rule 16-303, by knowingly making false statements of fact to the Court;
 - d. Rule 16-801, by knowingly making a false statement of material fact in connection with a disciplinary matter;
 - e. Rule 16-804(C), by engaging in conduct involving dishonesty, fraud, deceit and misrepresentation; and
 - f. Rule 16-804(D), by engaging in conduct prejudicial to the administration of justice.
50. The names and addresses of witnesses presently known to disciplinary counsel are, in addition to Respondent:

P. Scott Eaton, Esq. P.O. Box 25305 Albuquerque, NM 87125	James P. Barrett, Esq. P.O. Box 25305 Albuquerque, NM 87125
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FACTORS IN AGGRAVATION

51. Respondent has a prior disciplinary offense. *ABA Standards for Imposing Lawyer Sanctions* § 9.22(a).
52. Respondent has a dishonest or selfish motive. *Id.* § 9.22(b).
53. Respondent has engaged in a pattern of misconduct. *Id.* § 9.22(c).

54. Respondent has submitted false evidence and false statements during the disciplinary process. *Id.* § 9.22(f).

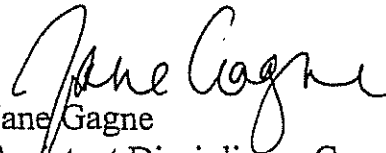
55. Respondent has substantial experience in the practice of law. *Id.* § 9.22(i).

56. It is anticipated this matter will be prosecuted by Assistant Disciplinary Jane Gagne.

Wherefore, by reasons of the foregoing, it is respectfully requested pursuant to Rule 17-309(C) NMRA, that a hearing committee be designated to hear evidence and make findings of fact, conclusions of law, and recommendations to the Disciplinary Board and, if any of the charges are sustained, that Respondent be disciplined and assessed the costs of this proceeding.

DATE: September 27, 2017

Respectfully Submitted,



Jane Gagne
Assistant Disciplinary Counsel
20 First Plaza, NW Ste 710
Albuquerque, NM 87102
(505) 842-5781
jgagne@nmdisboard.org


Joey D. Moya

1 **IN THE SUPREME COURT OF THE STATE OF NEW MEXICO**

2 **November 9, 2018**

3 **NO. S-1-SC-37204**

4 **IN THE MATTER OF**
5 **ERIC D. DIXON**

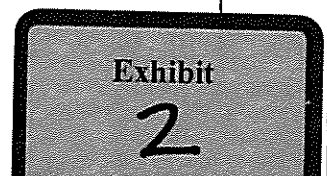
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7 **An Attorney Suspended from the**
8 **Practice of Law in the Courts of**
9 **the State of New Mexico**

10
11 **ORDER**

12 WHEREAS, this matter came on for consideration by the Court upon
13 recommendation of the disciplinary board for discipline, respondent's response
14 thereto, and the oral argument of the parties, and the Court having considered the
15 foregoing and being sufficiently advised; Chief Justice Judith K. Nakamura,
16 Justice Petra Jimenez Maes, Justice Charles W. Daniels, Justice Barbara J. Vigil,
17 and Justice Gary L. Clingman concurring;

18 NOW, THEREFORE, IT IS ORDERED that the findings of fact of the
19 disciplinary board are ACCEPTED as supported by substantial evidence, the
20 conclusions of law of the disciplinary board are ADOPTED with the exception of
21 the second sentence of Conclusion of Law E, and the disciplinary board's request
22 to adopt its recommendation for discipline is GRANTED AS MODIFIED BY
23 THIS ORDER;

24 IT IS FURTHER ORDERED that, pursuant to Rule 17-206(A)(3) NMRA,



1 respondent, ERIC D. DIXON, shall be INDEFINITELY SUSPENDED from the
2 practice of law, effective thirty (30) days from the date of this order, and for a
3 period of time of no less than nine (9) months;

4 IT IS FURTHER ORDERED that respondent shall comply with the
5 requirements of Rule 17-212 NMRA, provided that all deadlines in Rule 17-212
6 NMRA shall be computed from the date of this order and not from the effective
7 date of respondent's suspension;

8 IT IS FURTHER ORDERED that respondent may file a petition for
9 reinstatement with the disciplinary board in accordance with Rule 17-214(B)(2)
10 NMRA no sooner than nine (9) months from the effective date of his suspension,
11 and in addition to any conditions of reinstatement to be determined when, and if,
12 respondent elects to file a petition for reinstatement, respondent shall satisfy the
13 following conditions before the filing of any petition for reinstatement:

- 14 1. Respondent shall complete ten (10) hours of ethics continuing legal
15 education classes, with at least half of the credit hours earned for in-
16 person classes; and
- 17
18 2. Respondent shall take and pass the Multistate Professional Responsibility
19 Examination with a minimum scaled score of eighty (80);
20

21 IT IS FURTHER ORDERED that respondent shall pay the costs of this
22 proceeding in the amount of two thousand six hundred fifty-four dollars and
23 eighty-seven cents (\$2,654.87), which shall be paid within sixty (60) days from the
24 date of this order, and any balance remaining thereafter shall accrue interest at the

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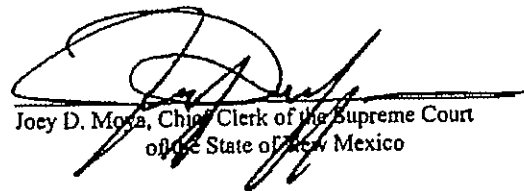
rate of eight and three-fourths percent (8 3/4%) per annum to be reduced to a transcript of judgment; and

IT IS FURTHER ORDERED that the Court shall issue an opinion at a later date.

IT IS SO ORDERED.



WITNESS, the Honorable Judith K. Nakamura, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 9th day of November, 2018.


Joey D. Moya, Chief Clerk of the Supreme Court
of the State of New Mexico

I CERTIFY AND ATTEST:
A true copy was served on all parties
or their counsel of record on date filed.
Joey D. Moya
Chief Clerk of the Supreme Court
of the State of New Mexico