



FILED  
May. 24, 2019

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

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

IN THE MATTER OF §  
JOSE MARCOS PERALES PINA, § CAUSE NO. 62036  
STATE BAR CARD NO. 24091472 §

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Jose Marcos Perales Pina (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 Jose Marcos Perales Pina, 1127 E. Idaho Ave., Las Cruces, New Mexico 88001.

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 Perales Pina matter consisting of the Specification of Charges; Findings of Fact and Conclusions of Law and Recommendation for Discipline; and the Disciplinary Panel's Decision and Recommendation, relating to the matter entitled *In the Matter of J. Marcos Perales Pina, Esq., Respondent, an*

*Attorney Licensed to Practice Law before the Courts of the State of New Mexico*, Disciplinary No. 03-2018-779, (Exhibit 1).

4. On or about March 8, 2019, an Order was entered in the Supreme Court of the State of New Mexico, in a case styled: No. S-1-SC-37402, *In the Matter of J. Marcos Perales Pina, an Attorney Suspended from the Practice Law Before the Courts of the State of New Mexico*, that states in pertinent part as follows:

. . . NOW, THEREFORE, IT IS ORDERED that the disciplinary panel's findings of fact, being supported by substantial evidence, and conclusions of law are ADOPTED.

IT IS FURTHER ORDEREED that the disciplinary panel's recommendation for discipline is ADOPTED AS MODIFIED by this order;

IT IS FURTHER ORDERED that respondent, J. MARCOS PERALES PINA, shall receive a DEFINITE SUSPENSION from the practice of law under Rule 17-206(A)(2) NMRA for a period of one (1) year effective, March 15, 2019 . . .

. . . IT IS FURTHER ORDERED that upon respondent's reinstatement, respondent shall be on supervised probation for a period of six (6) months in accordance with Rule 17-206(B)(1) NMRA . . .

(Exhibit 2).

4. The Findings of Fact and Conclusions of Law established that Respondent violated the following New Mexico Rules of Professional Conduct: Rule 16-101 - failing to provide competent representation to a client; Rule 16-801 - knowingly making false statements of material fact in connection with a disciplinary matter; and Rule 16-804(D) - engaging in conduct prejudicial to the administration of justice.

5. Copies of the set of documents consisting of the Specification of Charges; Findings of Fact and Conclusions of Law and Recommendation for Discipline; and the Disciplinary Panel's Decision and Recommendation and the Order entered by the Supreme Court are attached hereto


as Petitioner's Exhibits 1 and 2, and made a part hereof for all intents and purposes as if the same was copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 and 2 at the time of hearing of this cause.

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

Respectfully submitted,

**Seana Willing**  
Chief Disciplinary Counsel

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Amanda M. Kates  
Bar Card No. 24075987

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 Jose Marcos Perales Pina by personal service.

Jose Marcos Perales Pina  
1127 E. Idaho Ave.  
Las Cruces, New Mexico 88001



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

(6<sup>1</sup>) 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.

<sup>1</sup> 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.

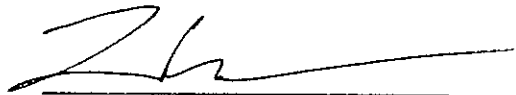
(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.

**AFFIDAVIT OF AUTHENTICITY**

State of New Mexico )  
                                          )  
County of Bernalillo )

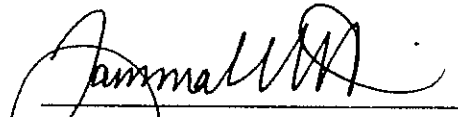
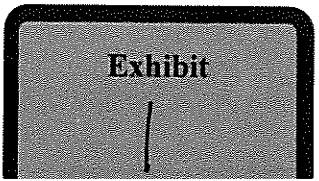
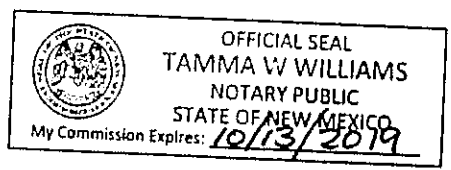
I, William D. Slease, Chief Disciplinary Counsel for the New Mexico Disciplinary Board, upon my oath and based upon my own personal knowledge and under the penalty of perjury under the laws of the State of New Mexico, do hereby declare and affirm that the following documents, attached hereto, are authentic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

Cause No.: 03-2018-779  
3/23/2018      Specification of Charges;  
undated        Findings of Fact and Conclusions of Law and Recommendation for Discipline; and  
11/28/2018    Disciplinary Panel's Decision and Recommendation



WILLIAM D. SLEASE  
Chief Disciplinary Counsel

Subscribed and sworn to before me this 4<sup>th</sup> day of April, 2019, by William D. Slease.

  
\_\_\_\_\_  
Notary Public

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

In the Matter of

**J. Marcos Perales Piña, Esq.,**

Disciplinary No. 03-2018-779

Respondent,  
An Attorney Licensed to  
Practice Law before the Courts  
of the State of New Mexico.

**DISCIPLINARY PANEL'S DECISION AND RECOMMENDATIONS**

THIS MATTER has come before the Disciplinary Board's Panel (Cynthia A. Fry, Alex C. Walker, and Edward L. Rose) upon referral by the Chair. The Panel has reviewed the record in this matter, including the transcript and record of the hearing held before the Hearing Committee on July 27, 2018. The Panel has also reviewed the briefs filed by Disciplinary Counsel and Respondent. The Panel hereby renders its decision and recommendations as follows.

**Review for Substantial Evidence**

1. The Hearing Committee's findings of fact are supported by substantial evidence.
2. The Panel therefore adopts all of the Hearing Committee's findings of fact.

3. The Panel also adopts all of the Hearing Committee's conclusions of law, with the exception of conclusion nos. 8 and 9. Conclusion no. 8 is contrary to the Hearing Committee's finding nos. 36 and 48, both of which found that specific testimonial statements by Respondent were not credible. Conclusion no. 9 is not supported by the Hearing Committee's findings of fact.

4. The Panel adopts an addendum to conclusion no. 4, designated as finding no. 4(d), as follows: Respondent has violated Rule 16-804(C) by engaging in conduct involving dishonesty, deceit or misrepresentation.

**Panel's Recommendations**

1. The Panel has reviewed the Hearing Committee's recommendations *de novo*, see *In re Bristol*, 2006-NMSC-041, ¶ 18, and disagrees with the recommended discipline. The Panel recommends to the Supreme Court the following:

a. That Respondent be definitely suspended for six months, followed by one year of probation supervised by an experienced, licensed New Mexico attorney, with the costs of supervised probation to be borne by Respondent. See *In re Lindsey*, 1991-NMSC-047, ¶ 9. Further, that Respondent shall comply with the requirements of Rule 17-212 NMRA and shall be reinstated only upon compliance with Rule 17-214(B)(1).

b. That Respondent be required to pay the costs of the disciplinary hearing.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Respectfully submitted by  
the Board Panel

/s/ Cynthia A. Fry  
Cynthia A. Fry, Panel Chair

/s/ Alex C. Walker  
Alex C. Walker

/s/ Edward L. Rose  
Edward L. Rose

CERTIFICATE OF SERVICE

The foregoing pleading was mailed  
on this 28<sup>th</sup> day of November, 2018, to:

John M. Brant  
Counsel for Mr. Perales  
202 Tulane Dr. SE  
Albuquerque, NM 87106

Jane Gagne via email  
William Slease via email

Erlinda D. Branchal  
Erlinda D. Branchal

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

**J. MARCOS PERALES PIÑA, ESQ.      Disciplinary No. 03-2018-779**

**An Attorney Licensed to  
Practice before the Courts  
of the State of New Mexico**

**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW AND  
RECOMMENDATION FOR DISCIPLINE**

The Hearing Committee in the instant matter submits these findings of fact, conclusions of law, and recommended discipline.

**FINDINGS OF FACT**

1. Respondent J. Marcos Perales Piña was licensed to practice law before the Courts in the State of New Mexico on September 29, 2006. He is also licensed in Texas.

2. Mr. Perales' practice is in family law, civil litigation, immigration and a few criminal cases. 60% to 70% of his cases are in family law.

3. Mr. Perales handles approximately 25 family law cases in New Mexico at any given time, of varying degrees of complexity – simple divorce, child custody, child and spousal support.

4. This matter arose from a complaint by Zulema Garcia.

5. Ms. Garcia has a son who was born in late 2015.

6. On September 21, 2017, Ms. Garcia was served with a petition to establish parentage and custody ("Petition") in State District Court in Las Cruces, *Briseño v. Garcia*, No. D-307-DM-201701184 ("New Mexico Case"), brought by the child's father.

7. Ms. Garcia admits that Mr. Briseno is the child's father.

8. On October 6, 2017, Ms. Garcia hired Respondent. Mr. Perales met with Ms. Garcia only one time, at the initial consultation.

9. Ms. Garcia was referred to Mr. Perales by Las Cruces attorney John Watson. *TR 21*. Mr. Watson referred Ms. Garcia to Mr. Perales because Mr. Perales

worked in both New Mexico and Texas, Ms. Garcia testifying “that way he can transfer my case from New Mexico to Texas.”

10. On October 6, 2017, Ms. Garcia signed a “Perales Law Firm Family Law Intake Sheet,” Exhibit 3, which asks the client to “[b]riefly describe your legal problem”; Ms. Garcia wrote: “Child custody, Petition filed against me.” The Intake Sheet also asks the client: “What would like [sic] to see as an outcome in this case,” to which Ms. Garcia wrote: “To have legal documents on to [sic] who has him @ times and dates.”

11. On October 6, 2017, during the only meeting Ms. Garcia and Respondent had, Ms. Garcia gave Respondent a copy of the Petition.

12. Respondent knew of the New Mexico case.

13. Ms. Garcia’s intention in hiring Mr. Perales was “...to try and take my case from New Mexico to Texas.

14. In Ms. Garcia’s November 29, 2017 disciplinary complaint, she alleges, in part: “I hired Mr. Perales Oct. 6 to represent me in the case D-307-DM-2017-01184 regarding a petition against me from my child’s father.”

15. Ms. Garcia told Mr. Perales at the initial consultation that she did not want him to just file a response in New Mexico. *TR 22; 72.*



16. In his December 13, 2017 Response to Ms. Garcia's disciplinary complaint, *see* Exh. 2, Respondent claimed that he was retained only to file in Texas:

I explained to [Ms. Garcia during the initial consultation] that the current New Mexico [case] may still retain continuing jurisdiction, and the case will ended [*sic*] up in New Mexico even if we filed a case in Texas.

Ms. Garcia still wanted to file the case in Texas. *She never explained to me that she wanted the representation here in New Mexico and in Texas.*

SF ¶ 20 (emphasis added).

17. Respondent did not confirm in writing any purported understanding that he would take action only in the Texas case.

18. Ms. Garcia credibly testified that she had expected Respondent to take action in the New Mexico case. TR 84-85:17-14.

19. Respondent's assertion to disciplinary counsel that Ms. Garcia expected Respondent to take action only in Texas was false.

20. On October 20, 2017, Ms. Garcia emailed Veronica, Respondent's paralegal in his Texas office: ". . . I was just wondering if you had gotten my file and

to see if there are any updates? Im [sic] supposed to have a reply to the petition by tomorrow so will I have to get an extension?" SF ¶ 10; Exhibit 6.

21. Ms. Garcia received no response to her email. SF ¶ 11.

22. Respondent took no action in the New Mexico Case; he did not even monitor the case. SF ¶ 12.

23. Respondent did not monitor his own file in Claimant's case, and he did nothing to monitor the work or lack thereof of his paralegal, to whom he assigned the preparation of pleadings in Claimant's case.

24. Mr. Perales acknowledges that even though he relied upon his former paralegal to follow through timely on her assigned task, it was his responsibility to follow up and make sure things were being done timely regarding the file. TR 28 - 29.

25. At the hearing, Respondent admitted that he should have been monitoring the New Mexico case, and that it was a mistake that he did not. TR 35:19-23.

26. On November 10, 2017, Respondent electronically filed in the 358<sup>th</sup> District Court in Ector County, Texas, a *Petition to Adjudicate Parentage*. SF ¶ 13.

27. However, because of a formatting error, the *Petition to Adjudicate Parentage* was not accepted by the Court. SF ¶ 14.

28. On November 20, 2017, the New Mexico Court in the New Mexico Case entered a *Default Judgment Confirming Parent-Child Relationship and Determining Custody, Time-Sharing and Child Support* (“*Default Judgment*”) against Ms. Garcia. SF ¶ 15.

29. On November 22, 2017, the father’s attorney emailed and mailed Ms. Garcia a letter informing her of the default judgment, with a copy of the *Default Judgment*. SF ¶ 16; Exhibit 7.

30. Under the *Default Judgment*, Ms. Garcia was ordered to turn over the child on November 26, 2017 for one week. SF ¶ 17; see Exh. 7.

31. When Ms. Garcia and Respondent spoke after the default judgment was entered, Respondent offered to fix the problem, but Ms. Garcia wanted only a refund of her retainer. SF ¶ 18.

32. Respondent refunded the retainer. SF ¶ 19.

33. Also in his response to the disciplinary complaint, Respondent provided a copy of an engagement letter dated October 10, 2017; which references “Texas Custody – Ector County,” and which states:

The client retains Perales Law Firm to render services in connection with the prosecution of an action for: child custody & support in the District Court of, [sic] Ector County . . . .

SF ¶ 21; Exhibit 4.

34. Ms. Garcia denied that she received the Texas engagement letter and testified that she received from Respondent's office an engagement letter with Respondent's original signature, which letter references "DM-2017-01184," and states:

The client retains Perales Law Firm to render services in connection with the prosecution of an action for: child custody & support in the District Court of, [sic] Dona Ana County . . . .

SF ¶ 22; Exhibit 5.

35. Respondent's signature page on the Texas engagement letter was copied from the New Mexico engagement letter signature page. TR, at 38-39:11-9.

36. Respondent's testimony that he did not know Ms. Garcia expected representation in the New Mexico case until disciplinary counsel sent to his attorney the New Mexico engagement was not credible.

37. On February 2, 2018, during the investigation of Ms. Garcia's disciplinary complaint, Ms. Garcia reported to disciplinary counsel that Respondent

had called her that day and subsequently reported that he had called her two other times on two other days. SF ¶ 23; Exhibit 9.

38. After disciplinary counsel relayed Ms. Garcia's statement to Respondent's attorney's attention, Respondent reported to his attorney that Ms. Garcia had called *him*, and that he did not call Ms. Garcia. SF ¶ 14; Exh. 9.

39. Respondent intentionally misrepresented the facts of who initiated the call to his attorney knowing that his attorney would relay this misrepresentation to disciplinary counsel. TR at 41-42:21-5.

40. Ms. Garcia provided her phone records to disciplinary counsel, which reflect three calls from a Texas number: one on February 2, 2018; one on February 6, 2018, and one on February 7, 2018. SF ¶ 25.

41. Ms. Garcia also had screenshots showing calls from the same Texas number from "Mr. Perales." SF ¶ 26; Exhibit 8.

42. Respondent told his attorney that the number reflected in Ms. Garcia's telephone records and in the screenshots—which number had been disconnected—was not his. SF ¶ 27; TR 41:21-23. That was also untruthful, and Respondent knew it was untruthful.

43. The number reflected in Ms. Garcia's telephone records and on the screenshots was from a "burner phone," which is a method through which one may

obtain, online, a telephone number—not the user’s normal phone number—will show up on the recipient’s caller ID. SF ¶ 28.

44. Disciplinary counsel subpoenaed the burner phone company—Ad Hoc Labs, Inc.—to ascertain the identity of the user of the burner phone number. SF ¶ 29.

45. Only after the company informed Respondent that it would produce the information in response to the subpoena, *see* Exhibit 10, did Respondent finally admit to his attorney that the number was in fact his and that he did make the phone calls to Ms. Garcia. SF ¶ 30; Exhibit 11.

46. Respondent downloaded the burner-phone number from which he called Ms. Garcia with the sole purpose of calling Ms. Garcia. *See* Exh. 11, at 2.

47. Ms. Garcia’s credibly testified as follows about the substance of the February 2018 phone calls that Respondent made to her:

- a. In the first phone call on February 2, Respondent “offered to either do a case for me for free or pay for my new lawyer.” She then asked if he was trying to “buy me off the Complaint.” He responded: “No. You can continue with the Complaint if you wish. I’m just trying to do this from our part because it was a mistake.” TR 92:11-17

b. In the second phone call on February 6, 2018, Respondent indicated that he was going to mail half of the check to her, and that he told her "all I need you to say is that you hired me for the Texas case only," after which he would mail the rest of the money to her. TR 93:14-16.

c. In the third and final phone call on February 7, 2018, Respondent told her that he was getting ready to mail out the check, and that he was just making sure that "we're on the same page."

48. Respondent's testimony that he did not ask Ms. Garcia to testify that she hired him only for a Texas case was not credible.

49. Respondent asked Ms. Garcia to testify that she hired him only for a Texas case in exchange for his payment of her attorney's fees.

50. Respondent acknowledged that what he did was "stupid," TR 61

### CONCLUSIONS OF LAW

1. The foregoing conduct has been proven by clear and convincing evidence.

2. "Misrepresentation in any form is unacceptable conduct by an attorney." *In re Ruybalid*, 194-NMSC-117, ¶ 7, 118 N.M. 587.

3. A reasonably competent attorney would have taken action in the New Mexico case.

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

a. Rule 16-101, by failing to provide competent representation to a client;

b. Rule 16-801, by knowingly making false statements of material fact in connection with a disciplinary matter;

c. Rule 16-804(D), by engaging in conduct prejudicial to the administration of justice.

5. Respondent has acknowledged the wrongful nature of his conduct.

6. By way of mitigation, Respondent has no prior disciplinary record.

7. By way of mitigation, Respondent made a timely and good faith effort to make restitution and to rectify the consequences of the situation.

8. By way of mitigation, Respondent was honest and forthcoming in his testimony at the disciplinary hearing.

9. By way of mitigation, Respondent has shown remorse for his misconduct.



### **RECOMMENDED FACTORS IN AGGRAVATION**

The following aggravating factors apply:

1. Respondent has engaged in a pattern of misconduct. *Id.* § 9.22(c).
2. Respondent has submitted false evidence and false statements during the disciplinary process. *Id.* § 9.22(f).

### **RECOMMENDED FACTORS IN MITIGATION**

1. Respondent has no prior disciplinary offenses. *Id.* § 9.23(a).
2. Respondent refunded Ms. Garcia's retainer in full prior to Ms. Garcia's submission of her disciplinary complaint. *Id.* § 9.32(d).

### **RECOMMENDED DISCIPLINE**

1. Respondent should be Formally Reprimanded by the Disciplinary Board, pursuant to Rule 17-206 (A) (5) NMRA.
2. In addition to the foregoing, the record discloses that the Respondent can still perform legal services with proper supervision.
3. Respondent should be suspended from the practice of law for a period of three (3) months to begin fifteen (15) days after entry of this order.

4. The suspension should be stayed if, within the 15 days period, Respondent makes arrangements with an experienced, licensed New Mexico attorney to supervise Respondent's law practice and procedures and to make recommendations as to how Respondent can avoid the failure to attend to matters in his office as are indicated herein. All costs associated with the supervising attorney shall be borne solely by Respondent. Said supervising attorney shall submit a letter to Disciplinary Counsel indicating that he/she has supervised Respondent's law practice and that said supervising attorney is satisfied that Respondent has learned how to operate his practice ethically and in accordance with good practices. Upon receipt of such supervising attorney's letter, the suspension shall be dismissed
5. Respondent shall be required to take and pass the ethics portion of the New Mexico Bar.
6. Respondent should be ordered to pay the costs of this proceeding.

Hearing Committee Chair

Frank N. Chavez

[fnc@roslaw.com](mailto:fnc@roslaw.com)

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Hearing Committee Member

Keith S. Burn

[keith@keithburnlaw.com](mailto:keith@keithburnlaw.com)

\_\_\_\_\_ at the direction & approval of Mr. Burn

Javin M. Taylor PhD

Hearing Committee Member

[Javin.taylor@comcast.net](mailto:Javin.taylor@comcast.net)

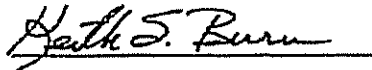
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 at the direction & approval of Mr. Burn

Javin M. Taylor PhD  
Hearing Committee Member  
[Javin.taylor@comcast.net](mailto:Javin.taylor@comcast.net)



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

In the Matter of

**J. MARCOS PERALES PIÑA, ESQ.**      **Disciplinary No. 03-2018-779**

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. Respondent J. Marcos Perales Piña, Esq. is an attorney currently licensed to practice law before the courts of the State of New Mexico. He was admitted to practice law in New Mexico on September 29, 2003. He is also licensed in Texas.

3. The factual allegations set forth in the Specification of Charges state acts of professional misconduct in violation of Rules 16-101, 16-103, 16-116, 16-302, 16-801 and 16-804 of the Rules of Professional Conduct.

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. This matter arose from a complaint by Zulema Garcia.
6. Ms. Garcia has a son who was born in late 2015.
7. On September 21, 2017, Ms. Garcia was served with a petition to establish parentage and custody (“Petition”) in State District Court in Las Cruces, *Briseño v. Garcia*, No. D-307-DM-201701184, brought by the child’s father.
8. On October 6, 2017, Ms. Garcia hired Respondent.
9. Ms. Garcia described her legal problem on Respondent’s client intake sheet as “child custody, petition filed against me.”
10. Ms. Garcia gave Respondent a copy of the Petition; she hoped to get the New Mexico case dismissed, and a case filed in Texas.
11. On October 20, 2017, Ms. Garcia emailed Veronica, Respondent’s paralegal in his Texas office: “. . . I was just wondering if you had gotten my file and to see if there are any updates? Im [sic] supposed to have a reply to the petition by tomorrow so will I have to get an extension?”
12. Ms. Garcia received no response.
13. Respondent took no action regarding *Briseño*.
14. On November 9, 2017, a default judgment was entered against Ms. Garcia in *Briseño*.
15. On November 22, 2017, the father’s attorney emailed Ms. Garcia informing her of the default judgment; included were copies of the judgment and

court-ordered parenting plan, under which she was ordered to turn over the child to the father on November 26, 2017 for one week.

16. Ms. Garcia then called Respondent's office in Texas; Veronica told her she had no information on the New Mexico case; that Ms. Garcia would have to wait for a week to get information; and that she could not speak with Respondent. Finally, Ms. Garcia threatened to report him to the Disciplinary Board, and he later called back. He then offered to fix the problem, but she just wanted her retainer returned, which he did do.

17. In his December 13, 2017 response to Ms. Garcia's disciplinary complaint, Respondent claimed that he was retained only to file in Texas. He also wrote:

I explained to [Ms. Garcia during the initial consultation] that the current New Mexico [case] may still retain continuing jurisdiction, and the case will ended [*sic*] up in New Mexico even if we filed a case in Texas.

Ms. Garcia still wanted to file the case in Texas. She never explained to me that she wanted the representation here in New Mexico and in Texas.

18. The statements in the second paragraph are false.

19. In his response to the disciplinary complaint, he also claimed that "she had defenses as to out-of-state custody order in Texas." That claim demonstrates, if it is not a fabrication, a complete lack of understanding of the fundamental legal doctrine of jurisdiction in domestic relations matters.

20. Also in his response to the disciplinary complaint, Respondent provided a copy of an engagement letter dated October 10, 2017; which references “Texas Custody – Ector County,” and which states:

The client retains Perales Law Firm to render services in connection with the prosecution of an action for: child custody & support in the District Court of , [sic] Ector County . . . .

21. Ms. Garcia denies ever receiving such a letter. Instead, she provided to disciplinary counsel what appears to be an original engagement letter with Respondent’s signature that she claims she received from Respondent, which letter references “DM-2017-01184,” and states:

The client retains Perales Law Firm to render services in connection with the prosecution of an action for: child custody & support in the District Court of , [sic] Dona Ana County . . . .

22. On February 2, 2018, during the pending investigation of the Ms. Garcia’s complaint, according to Ms. Garcia, Respondent called her and offered to pay for her attorneys’ fees that she incurred to vacate the Default Judgment if she would just say that she retained him to file in Texas. Ms. Garcia reported that he called her two other times on other days with similar messages.

23. After disciplinary counsel brought the matter to Respondent’s attorney’s attention, Respondent reported to his attorney that Ms. Garcia had called *him* to ask that he pay her fees.



24. Accordingly, disciplinary counsel asked for Respondent's telephone records.

25. Ms. Garcia's phone records reflect three calls from a Texas number: one on February 2, 2018; one on February 6, 2018 one on February 7, 2018; Ms. Garcia has screenshots that show the same calls from the same number, from "Mr. Perales."

26. As of the date of the filing of these charges, Respondent has not provided his phone records. He claims that the number reflected in Ms. Garcia's records and her screenshots—which number has been disconnected—is not his.

27. Wherefore, by reason of the foregoing, Respondent has violated the following provisions of the Rules of Professional Conduct:

- a. 16-101, by failing to provide competent representation to a client;
- b. 16-103, by failing to represent his client diligently;
- c. 16-302, by failing to expedite litigation;
- d. 16-801(A), by knowingly making false statements of material facts in this disciplinary proceeding;
- e. 16-804(B), by committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, *see* § 30-24-3(A)(1) NMSA;

- f. 16-804(C), by engaging in conduct involving fraud in attempting to obtain a witness's false testimony;
- g. 16-804(D), by engaging in conduct that is prejudicial to the administration of justice.

### FACTORS IN AGGRAVATION

28. Respondent has a dishonest or selfish motive. *ABA Standards for Imposing Lawyer Sanctions*, at § 9.22(h).

29. Respondent has committed a pattern of misconduct. *Id.* § 9.22(c).

30. Respondent has submitted false statements and has engaged in deceptive practices during the disciplinary process. *Id.* § 9.22(f).

31. Respondent has refused to acknowledge the wrongful nature of his conduct. *Id.* § 9.22(g).

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

33. The names and addresses of witnesses presently known to disciplinary counsel are:

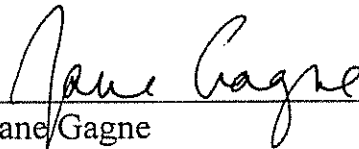
Zulema Garcia  
PO Box 764  
Fort Hancock, TX 79839

34. It is anticipated that this matter will be prosecuted by assistant disciplinary counsel 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, Respondent be disciplined and assessed the costs of the proceeding.


Dated: March 23, 2018

Respectfully Submitted,



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Jane Gagne  
Assistant Disciplinary Counsel  
20 First Plaza NW, Suite 710  
Albuquerque, NM 87102

  
Joey D. Moya

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

2                                           **March 08, 2019**

3                   **NO. S-1-SC-37402**

4                   **IN THE MATTER OF**  
5                   **J. MARCOS PERALES PINA**

6                   **An Attorney Suspended from the**  
7                   **Practice of Law Before the Courts**  
8                   **of the State of New Mexico**

9                                           **ORDER**

10                   WHEREAS, this matter came on for consideration upon recommendation of  
11                   the disciplinary panel of the disciplinary board to suspend respondent, J. Marcos  
12                   Perales Pina, disciplinary counsel's request for review and hearing, respondent's  
13                   response to disciplinary counsel's request for review and hearing, and the oral  
14                   arguments of the parties on March 5, 2019, and the Court having considered the  
15                   pleadings, record, and oral argument of the parties and being sufficiently advised;  
16                   Chief Justice Judith K. Nakamura, Justice Barbara J. Vigil, Justice Michael E.  
17                   Vigil, Justice C. Shannon Bacon, and Justice David K. Thomson concurring;

18                   NOW, THEREFORE, IT IS ORDERED that the disciplinary panel's  
19                   findings of fact, being supported by substantial evidence, and conclusions of law  
20                   are ADOPTED;

1 IT IS FURTHER ORDERED that the disciplinary panel's recommendation  
2 for discipline is ADOPTED AS MODIFIED by this order;

3 IT IS FURTHER ORDERED that respondent, J. MARCOS PERALES  
4 PINA, shall receive a DEFINITE SUSPENSION from the practice of law under  
5 Rule 17-206(A)(2) NMRA for a period of one (1) year, effective March 15, 2019;

6 IT IS FURTHER ORDERED that respondent shall comply with the  
7 requirements of Rule 17-212 NMRA, which shall include filing the affidavit  
8 required under Rule 17-212(D) NMRA no later than (10) days after the effective  
9 date of his definite suspension;

10 IT IS FURTHER ORDERED that, in lieu of the procedures in Rule 17-  
11 214(B)(2) NMRA, respondent may seek automatic reinstatement by filing an  
12 affidavit of compliance in accordance with the procedures in Rule 17-214(B)(1)  
13 NMRA stating that respondent has complied with the following conditions of  
14 reinstatement:

- 15 1. Respondent shall attend at least ten (10) hours of continuing legal  
16 education courses in ethics, with at least (5) hours completed through  
17 in-person course attendance, and shall report his completion of those  
18 courses to disciplinary counsel;
- 19 2. Respondent shall submit to a character and fitness investigation by the  
20 Board of Bar Examiners and shall pay all costs associated with that  
21 investigation, and the results of the investigation shall be provided to  
22 disciplinary counsel;
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3. Respondent shall take the Multistate Professional Responsibility Examination (MPRE), prepared and administered by the National Conference of Bar Examiners, and shall attain a minimum scaled score of eighty-five (85);
4. Respondent shall pay the costs of this proceeding to the disciplinary board as set forth below;

IT IS FURTHER ORDERED that upon respondent's reinstatement, respondent shall be on supervised probation for a period of six (6) months in accordance with Rule 17-206(B)(1) NMRA under the following terms and conditions:

1. Respondent shall be supervised by a New Mexico attorney approved by disciplinary counsel, who shall meet with respondent at a frequency set by disciplinary counsel;
2. The structure and goals of the supervised probation shall be set by disciplinary counsel, with the costs of the supervised probation to be paid by respondent;
3. Respondent's supervising attorney shall submit reports on the status of respondent's supervised probation to disciplinary counsel at least every two (2) months; and

IT IS FURTHER ORDERED that respondent shall pay costs to the disciplinary board in the amount of one thousand and one dollars and seventy-three cents (\$1001.73) no later than thirty (30) days from the date of this order. Any unpaid balance thereafter shall accrue interest at the statutory rate of eight and

1 three-fourths percent (8¾%) per annum until paid in full and any amount unpaid  
2 may be reduced to a transcript of judgment.

3 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 8th day of March, 2019.

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

4 I CERTIFY AND ATTEST:  
A true copy was served on all parties  
or their counsel of record on date filed.

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