



Jose I. Gonzalez-Falla, Corpus Christi Thomas E. Pitts, Lubbock

MEMBERS

Alice A. Brown, Houston Yolanda De León, Harlingen W. Clark Lea, Midland Clement H. Osimetha, Dallas Carol E. Prater, Temple Deborah J. Race, Tyler Ben Selman, Waco Charles L. Smith, San Antonio Thomas J. Williams, Fort Worth

STAFF

Christine E. McKeeman, Executive Director/General Counsel Gayle Riley Vickers, Deputy Director/Counsel Jackie L. Truitt, Executive Assistant

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THE BOARD of DISCIPLINARY APPEALS

APPOINTED BY THE SUPREME COURT of TEXAS

August 31, 2008

The Honorable Chief Justice and Justices of the Supreme Court of Texas Mr. Harper Estes, President, State Bar of Texas Mr. Joe Shannon, Jr., Chair, State Bar of Texas Board of Directors

On behalf of the Board of Disciplinary Appeals, I am pleased to submit this report summarizing BODA's activities for 2007–2008. The report describes BODA's jurisdiction and operations, case dockets, and membership and staff. Through the dedication of its members and staff, BODA continues to dispose of more than 2,200 attorney discipline cases annually.

BODA has continued its efforts to disseminate public decisions and information about the substantive disciplinary rules and related procedural rules. The BODA website, **www.txboda.org**, contains a searchable database of recent past public decisions, as well as opinions and affiliated orders that BODA has published. BODA members and staff have continued the active practice of speaking at CLE and other functions to educate the Bar and the public about BODA, the rules of professional conduct, and the disciplinary system generally.

As my BODA term expires, I thank the Court personally, and on behalf of each BODA member, for the opportunity to serve. Although service on BODA requires a substantial investment of time and energy, the experience is uniquely rewarding. We are honored to serve the Court, the legal profession, and the citizens of Texas.

Based on the time commitments required, and the fact that board members rotate off each year, BODA would not be able to serve effectively without the remarkable service and dedication of BODA's extremely capable staff. Their experience and commitment are critical to BODA's work.

We are available to discuss this report, provide any additional information, or answer any questions.

Very truly yours,

Pare a Clus

Paul D. Clote

Chair, 2007-2008

cc:

Ms. Betty Blackwell, Chair, Commission for Lawyer Discipline

Mr. John Edwards, Executive Director, State Bar of Texas

Mr. John A. Neal, Chief Disciplinary Counsel, State Bar of Texas

Mr. Gaines West, Chair, Grievance Oversight Committee

THE BOARD of DISCIPLINARY APPEALS APPOINTED BY THE SUPREME COURT of TEXAS MEMBERS 2007- 2008



Front row, left to right: Thomas J. Williams, Jose I. Gonzalez-Falla, Paul D. Clote, Thomas E. Pitts, and Clement H. Osimetha. Back row: Alice A. Brown, Deborah J. Race, Yolanda de León, W. Clark Lea, Charles L. Smith, Ben Selman, and Carol E. Prater.

The Board of Disciplinary Appeals consists of 12 attorneys appointed by the Supreme Court of Texas to serve up to two three-year terms. Members represent diverse geographic and law practice areas, from sole practitioners to corporate counsel, from a federal public defender to a former district attorney. Approximately half the board's members previously served on grievance committees.

BODA members typically participate in twice weekly telephone panels to decide classification appeals twice each month and attend hearings en banc four to six times per year. The board selects its own chair and vice chair. All members serve without compensation.

Chair **Paul D. Clote** is a private practitioner in Houston. He graduated from the University of Texas School of Law in 1977 and was appointed to BODA in 2002. Clote is a life fellow of the Houston Bar Foundation and the Texas Bar Foundation and a member of the American Board of Trial Advocates and the Association of Attorney-Mediators.

Vice Chair **Jose I. Gonzalez-Falla** is supervisory assistant federal public defender for the Southern District of Texas in Corpus Christi. Gonzales-Falla graduated from the Southern Methodist University School of Law in 1984 and was appointed to BODA in 2003. He is certified in criminal law by the Texas Board of Legal Specialization.

Vice Chair **Thomas E. Pitts** is a partner in Splawn Simpson Pitts in Lubbock. He graduated from the Texas Tech University School of Law in 1983 and was appointed to BODA in 2003. From 1993 to 1999, Pitts served on the State Bar of Texas District 16-A Grievance Committee, including two years as chair.

Alice A. Brown is government environmental litigation coordinator for Exxon Mobil Corp. in Houston, where she supervises and manages environmental litigation brought by governmental agencies. She graduated from the University of Houston Law Center in 1982 and was appointed to BODA in 2006.

W. Clark Lea is a shareholder in Cotton, Bledsoe, Tighe & Dawson in Midland. He graduated from Baylor Law School in 1990 and was appointed to BODA in 2007. Lea has served as vice chair of the State Bar of Texas Law Office Management Committee and is a life fellow of the Texas Bar Foundation.

Yolanda de León of Brownsville served as county and district attorney for Cameron County from 1997 until 2004. She graduated from the University of Houston Law Center in 1981 and was appointed to BODA in 2002.

Clement H. Osimetha is vice president and associate general counsel for Mary Kay, Inc. in Dallas. He graduated from the Southern Methodist University School of Law in 1995 and was appointed to BODA in 2002. Osimetha has received awards from the Dallas Association of Young Lawyers and J.L. Turner Legal Association.

Carol E. Prater is a partner in Prater & Ridley in Temple. She graduated from Baylor Law School in 1970 and was appointed to BODA in 2003. Prater has served as secretary of the Bell-Lampasas-Mills County Bar Association and is a fellow of the Texas Bar Foundation. She is certified in family law by the Texas Board of Legal Specialization.

Deborah J. Race is a partner in Ireland, Carroll & Kelley, P.C. in Tyler. She graduated from the University of Houston Law Center in 1982 and was appointed to BODA in 2007. Race served as chair of the State Bar of Texas District 2-A Grievance Committee and is a life fellow of the Texas Bar Foundation. She is certified in civil appellate law by the Texas Board of Legal Specialization.

Ben Selman is a shareholder in Naman, Howell, Smith & Lee, L.L.P in Waco. He graduated from Baylor Law School in 1973 and was initially appointed to BODA in 1995, serving as chair and vice chair. Selman was reappointed to the board in 2006. From 2003 to 2006, he served on the State Bar of Texas Commission for Lawyer Discipline.

Charles L. Smith is of counsel to Jackson Walker in San Antonio. He graduated from St. Mary's School of Law in 1955 and was appointed to BODA in 2006. Smith has served as president of the State Bar of Texas and as chair of the State Bar Board of Directors, the Commission on Judicial Conduct, and the Commission for Lawyer Discipline. In 2007, he received the Texas Bar Foundation's Outstanding 50-Year Lawyer Award.

Thomas J. Williams is a partner in Haynes and Boone, L.L.P. in Fort Worth. He graduated from the University of Texas School of Law in 1983 and was appointed to BODA in 2007. Williams is vice chair of the Tarrant County Bar Foundation Board of Directors and is a life fellow of the Texas Bar Foundation. He is a past recipient of the Tarrant County Bar Association's Professionalism Award.

OVERVIEW

AUTHORITY

Every lawyer admitted or specially admitted to practice in Texas is subject to the disciplinary and disability jurisdiction of the Supreme Court of Texas, which has the inherent power under the Texas Constitution to regulate the practice of law. The Supreme Court of Texas has delegated certain power to the Board of Disciplinary Appeals (BODA) to hear and decide various attorney disciplinary matters. BODA is a statewide tribunal with original and appellate jurisdiction to hear six types of attorney discipline and disability matters. BODA members are attorneys appointed by the Supreme Court of Texas. In hearing and determining disciplinary proceedings, BODA exercises the powers of a trial court or appellate court.

BODA reviews grievance classification screening dismissals by the State Bar of Texas Chief Disciplinary Counsel's Office; decides appeals from State Bar district grievance committee evidentiary judgments; has exclusive original jurisdiction to hear compulsory and reciprocal discipline cases; hears petitions to revoke probations imposed by grievance committees; and handles attorney disability cases. With the exception of appeals from classification screening decisions, which are final, BODA decisions are appealable directly to the Supreme Court of Texas.

BODA proposes rules of procedure and administration to the Supreme Court for promulgation. BODA revised its internal rules extensively in 2004 to reflect changes to the State Bar Act and Texas Rules of Disciplinary Procedure (TRDP), provide more flexibility in setting hearings, model the rules governing appellate cases after the Texas Rules of Appellate Procedure (TRAP), refine procedures for disability matters, and clarify certain rules. The BODA website, www.txboda.org, contains more information about BODA, its members, operations, issued opinions, current hearings docket, past decisions, and previous reports.

OFFICE

BODA holds hearings in the Supreme Court courtroom with the assistance of the office of the Clerk of the Court. BODA's administrative offices are located in the Texas Law Center in Austin.

BODA's staff consists of an Executive Director/General Counsel, who administers and supervises BODA operations, advises the Board, and serves as the official custodian of BODA records; a Deputy Director/Counsel, who assists with all operations and has primary responsibility for the disability docket, acts as the clerk for District Disability Committees and appeals from BODA to the Supreme Court, and maintains the BODA website; and an Executive Assistant, who assists with office management, case intake and management, docket control, hearings coordination, and requests for information and assistance from the public and attorneys. The Executive Director and Deputy Director have a combined 29 years' experience with the Board of Disciplinary Appeals. The Executive Assistant joined BODA in 2000.

CASE DOCKETING AND HEARINGS

During weeks that BODA does not meet en banc for hearings, BODA considers appeals from grievance screening decisions in two telephone conferences. These panels consist of three BODA members

assigned randomly and either the Executive Director or Deputy Director with a typical docket of approximately 30 grievances. A BODA member may refer any classification appeal to the full Board for consideration for any reason. The Board considers those matters at the next scheduled en banc conference. Grievance screening decisions and appeals are confidential.

Other disciplinary cases, including compulsory discipline, reciprocal discipline, revocations of probation, and appeals from evidentiary judgments are considered by the Board en banc. The BODA chair may assign any matter to a panel of three members to decide. BODA hearings are open to the public.

Information about the Grievance Process

BODA responds to requests for information concerning the grievance system from attorneys and the public. Except for restrictions discussing pending matters and confidential deliberations, BODA assists the public and the bar by providing information concerning disciplinary procedure and operations. As a tribunal, BODA cannot assist a party to any disciplinary proceeding directly with the underlying complaint.

PROFESSIONAL DEVELOPMENT

In addition to its adjudicatory functions, BODA members and staff regularly participate in local and national seminars, conferences, and committees to provide information about current ethical issues and rules revisions. In addition to writing and speaking at ethics seminars, BODA members and staff meet with local and national disciplinary entities to develop procedures to improve the discipline system and discuss substantive issues. In October 2007, BODA participated in the Grievance Symposium sponsored by the Texas Commission for Lawyer Discipline with a panel presentation and discussion of BODA jurisdiction and operations. The Deputy Director also met with CDC's new classification staff to review substantive rule violations constituting professional misconduct. The BODA Chair and Vice Chairs also met with representatives from the Grievance Oversight Committee to discuss topics of interest in the upcoming GOC report to the Supreme Court of Texas.

The BODA Executive Director serves on the Supreme Court Task Force on the Texas Disciplinary Rules of Professional Conduct, which met in spring 2008 with representatives from the Supreme Court and the State Bar Committee on the Texas Disciplinary Rules of Professional Conduct to finalize recommended changes to the Rules.

The Executive Director also serves as a director on the National Council of Lawyer Disciplinary Boards, Inc. (www.ncldb.org), a forum for the exchange of information and ideas about the administration, conduct, and improvement of formal disciplinary and related proceedings for lawyers admitted to practice law in one or more jurisdictions of the United States. During 2007-2008, the NCLDB had 22 state members. The NCLDB meets annually in conjunction with the American Bar Association midyear meeting to present a program of substantive and procedural issues. The NCLDB also works with the National Organization of Bar Counsel and the Association of Professional Responsibility Lawyers to plan and present programs.

BODA strongly encourages coordination between the Board, the State Bar of Texas, the Commission for Lawyer Discipline, the Grievance Oversight Committee, and related groups to identify and propose improvements to the existing disciplinary system.

BODA JURISDICTION

ORIGINAL JURISDICTION

Compulsory Discipline

BODA has exclusive original jurisdiction to hear petitions for compulsory discipline filed by the State Bar of Texas Chief Disciplinary Counsel's Office when an attorney has been convicted of, or placed on deferred adjudication for, an "Intentional Crime."

Reciprocal Discipline

BODA has exclusive original jurisdiction to hear petitions for reciprocal discipline filed by the State Bar of Texas Chief Disciplinary Counsel's Office on behalf of the Commission for Lawyer Discipline. Attorneys licensed in Texas and another jurisdiction are subject to reciprocal discipline in Texas following a disciplinary sanction in the second jurisdiction.

Revocations of Probation

BODA has exclusive original jurisdiction for the full term of a probated suspension imposed by a State Bar grievance committee to hear petitions to revoke the probation.

APPELLATE JURISDICTION

Grievance Screening and Classification Appeals

The State Bar of Texas Chief Disciplinary Counsel's Office (CDC) screens every writing received that alleges professional misconduct to determine whether the writing describes conduct which, if true, would violate the Texas Disciplinary Rules of Professional Conduct (TDRPC). If the CDC determines that the writing does not allege misconduct and dismisses the grievance, the complainant can appeal that decision to BODA.

Appeals from Evidentiary Judgments

Either the Commission for Lawyer Discipline or an attorney against whom discipline has been imposed by a State Bar grievance committee may appeal any judgment from an evidentiary proceeding, including a dismissal, the findings of professional misconduct, or sanction imposed. Appeals to BODA from evidentiary judgments proceed similarly to civil appeals with a notice of appeal, record, briefs, and oral argument.

Disability Cases and Reinstatements

BODA has exclusive original jurisdiction to suspend indefinitely an attorney who is suffering from a disability: any physical, mental, or emotional condition, with or without a substantive rule violation, which results in the attorney's inability to practice law or otherwise carry out his or her professional responsibilities to clients, the courts, the profession, or the public.

For more detailed information about BODA jurisdiction and procedures, visit www.txboda.org.

BODA OPINIONS

BODA may render judgment with or without a written opinion. Since 2004, BODA has issued the following opinions, which are available at **www.txboda.org**:

Disqualification — BODA member not disqualified to hear petition to revoke attorney's probation merely because member's firm formerly represented a party adverse to one of attorney's clients in an unrelated matter. *In re Watson*, BODA Case 30648.

Delivery of Controlled Substance Is an Intentional Crime — Attorney convicted of unlawful delivery of controlled substance subject to compulsory discipline under Part VIII of the Texas Rules of Disciplinary Procedure. BODA distinguished unlawful delivery from mere possession of a controlled substance. *In re Filippov*, BODA Case 30611.

Abuse of Discretion in Assessing Sanction — Respondent attorney failed to show that Evidentiary Panel abused its discretion in imposing sanction where the record indicated that the panel considered the proper factors as set out in the Texas Rules of Disciplinary Procedure, including mitigating factors. *Molina v. Comm'n for Lawyer Discipline*, BODA Case 35426.

Unconscionable Fee — Unconscionability of fee for disciplinary purposes is generally determined at the outset of the representation. *Weir v. Comm'n for Lawyer Discipline*, BODA Case 32082.

Substituted Service — An affidavit in support of a Motion for Substituted Service must strictly comply with the Texas Rules of Civil Procedure to support a default judgment. *Shelton v. Comm'n for Lawyer Discipline*, BODA Case 36059.

Return of Service — Proof of return of service by certified mail must bear the respondent attorney's signature in compliance with Texas Rules of Civil Procedure to support a default judgment. Sims v. Comm'n for Lawyer Discipline, BODA Case 34229.

Evidentiary Panel Quorum — Quorum of evidentiary panel consisting of four attorneys and one layperson did not satisfy the statutory requirement that a quorum must include at least one public member for every two attorney members present. The panel consequently lost the authority to render judgment. *Cafiero v. Comm'n for Lawyer Discipline*, BODA Case 37811.

Evidentiary Panel Quorum — Quorum of evidentiary panel consisting of three attorneys and one layperson satisfies the statutory requirement that a quorum must include at least one public member for every two attorney members present. *Allison v. Comm'n for Lawyer Discipline*, BODA Case 41135.

Possession with Intent to Promote Obscene Material Depicting Minor Is an Intentional Crime — Attorney placed on deferred adjudication for possession with intent to promote obscene material depicting children engaging in sexual acts was convicted of a crime involving moral turpitude as a matter of law, and therefore an Intentional Crime, subjecting the attorney to compulsory discipline

under Part VIII of the Texas Rules of Disciplinary Procedure. In re Pope, BODA Case 41472.

COMPULSORY DISCIPLINE SUMMARY

Between June 1, 2007, and May 31, 2008, BODA decided petitions for compulsory discipline against eight attorneys, including criminal convictions for:

Felony Theft

Attorney sentenced to total term of five years imprisonment. Attorney's license suspended pending appeal of criminal conviction. Ted Roberts (Bar Card #17019705); BODA Case 40196.

Conspiracy to Commit Visa Fraud and Induce Aliens to Enter the U.S. for Commercial Advantage and Private Financial Gain

Attorney sentenced to total term of 51 months imprisonment. Attorney disbarred. Yali Huang (Bar Card #00795433); BODA Case 40220.

Conspiracy to Commit Mail Fraud, Securities Fraud, and Wire Fraud

Attorney sentenced to total term of 72 months imprisonment. Attorney disbarred. Jamie Olis (Bar Card #00791373); BODA Case 69677.

First Degree Murder and Use of a Firearm During a Felony

Attorney sentenced to life term. Attorney's license suspended pending appeal of the criminal conviction. Piper A. Rountree (Bar Card #17323050); BODA Case 39905.

Tax Evasion, Evading Assessment of Tax, and False Statement to Obtain a Loan

Attorney sentenced to total term of 15 months imprisonment. Attorney disbarred. Dean Troutt (Bar Card #24034787); BODA Case 40490.

Bank Fraud, Aiding and Abetting, and Money Laundering, Aiding and Abetting

Attorney sentenced to total term of 60 months imprisonment. Attorney disbarred. James W. Demik (Bar Card #05654500); BODA Case 40503.

Tax Evasion

Attorney sentenced to 18 months probation. Attorney suspended for term of the criminal probation by agreed judgment. David Cole (Bar Card #00783854); BODA Case 40956.

Additionally, four attorneys with compulsory cases pending resigned in lieu of discipline before the matters were heard.

BODA CASE STATISTICS

June 1, 2007 - May 31, 2008

GRIEVANCES FILED

Total grievances filed with State Bar	7,308
Total dismissed	5,161 (70%)
Total upgraded	1,969 (30%)

Percentage of dismissed grievances appealed to BODA 43%

BODA CASES

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Total cases filed with BODA	2,267
Total classifications appeals filed	2,235
Total BODA dispositions	2,200
Total classifications appeals decided	2,170
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En banc hearings (July 2007, September 2007, April 2008)	3
Panel hearings (January 2008)	1
Telephone conferences	75

CLASSIFICATION APPEALS

Dismissed grievances appealed to BODA

	Filed	Decided	Reversed
Austin	214	215	23 (11%)
Dallas	950	921	88 (10%)
Houston	548	521	30 (6%)
San Antonio	523	513	40 (8%)
Total	2,235	2,170	181(8%)
Average wait to receive file	e from State Bar		17 days
Average time to decide classification appeal once file received			17 days
Total appeal time from ap	peal filed until d	lecision	34 days

CASES OTHER THAN CLASSIFICATION APPEALS

Appeals from evidentiary judgments	14 filed, 12 decided
Compulsory cases	12 filed, 12 decided
Petitions to revoke probation	3 filed, 3 decided
Disabilities	1 filed, 1 decided
Appeals from BODA to Supreme Court	4 filed, 3 decided, 4 pending

(Of decided appeals, 1 affirmed, 1 dismissed for want of prosecution, 1 affirmed in part and reversed in part)

BUDGET

Total budget FY 07-08	\$422,207
Funds expended	\$355,413
Variance/favorable	16%

THE BOARD of DISCIPLINARY APPEALS OATH

I do solemnly swear (or affirm) that I will faithfully execute my duties as a member of the Board of Disciplinary Appeals, as required by the Texas Rules of Disciplinary Procedure, and will, to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of the State of Texas. I further solemnly swear (or affirm) that I will keep secret all such matters and things as shall come to my knowledge as a member of the Board of Disciplinary Appeals arising from or in connection with each Disciplinary Action and Disciplinary Proceeding unless permitted to disclose the same in accordance with the Rules of Disciplinary Procedure or unless ordered to do so in the course of a judicial proceeding or a proceeding before the Board of Disciplinary Appeals. I further solemnly swear (or affirm) that I have neither directly paid, offered, or promised to pay, contributed any money or valuable thing, or promised any public or private office to secure my appointment. So help me God.

— Texas Rule of Disciplinary Procedure 7.04