

THE BOARD *of* DISCIPLINARY APPEALS
APPOINTED BY THE SUPREME COURT *of* TEXAS
REPORT 2016



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

CHAIR

David N. Kitner, *Dallas*

VICE CHAIR

Ramon Luis Echevarria II, *Houston*

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Robert A. Black, *Beaumont*

Jeanne C. “Cezy” Collins, *El Paso*

David M. Gonzalez, *Austin*

Wendy Adele Humphrey, *Lubbock*

Roland K. Johnson, *Fort Worth*

Kathy Kinser, *Dallas*

John J. “Mike” McKetta III, *Austin*

Mike Mills, *McAllen*

Deborah Pullum, *Tyler*

George A. Taylor, *San Antonio*

SUPREME COURT OF TEXAS LIAISON

The Honorable Justice Debra H. Lehrmann

STAFF

Christine E. McKeeman, *Executive Director/General Counsel*

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THE BOARD *of* DISCIPLINARY APPEALS
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From the Chair
July 31, 2016



On behalf of the Board of Disciplinary Appeals, I am pleased to submit the annual report for fiscal year June 1, 2015 through May 31, 2016 to the Supreme Court of Texas and to the State Bar Board of Directors, pursuant to Texas Rules of Disciplinary Procedure 7.08B. The report recognizes BODA's members and describes its decisions, jurisdiction, cases filed and decided, hearings, and operations.

During the past year, BODA decided ten evidentiary appeals including three appeals which resulted in written opinions on important substantive and procedural rule interpretations: *Schultz v. Commission for Lawyer Discipline*, *Sebesta v. Commission for Lawyer Discipline*, and *Commission Lawyer Discipline v. a Texas Attorney*. These decisions are discussed in detail in this report.

Other BODA highlights include:

- Disposed of 1,470 matters
- Decided 32 cases resulting in final judgments of discipline or disability
- Kept all dockets current
- Had all appeals to the Supreme Court of Texas affirmed or dismissed
- Met en banc for conferences and hearings quarterly in Austin
- Met by telephone conference 52 times for hearings in three member panels
- Reversed 151 grievance dismissals and returned them for just cause investigation

On behalf of all members we are grateful that the Supreme Court appointed us to serve on BODA. In terms of self-regulation of our profession, the work of BODA is indispensable. The 12 BODA members have collectively more than 300 years of experience in the practice of law. Each member is dedicated to his or her service on BODA, as is the BODA staff which provides us with invaluable support.

A handwritten signature in black ink that reads "David N. Kitner". The signature is written in a cursive, flowing style.

David N. Kitner
Chair of the Board of Disciplinary Appeals, 2015–2016



*Back row: David González, Kathy Kinsler, Mike McKetta, Deborah Pullum, Roland Johnson, Wendy Humphrey, Mike Mills
Front row: Bob Black, George Taylor, David Kitner, Ray Echevarria, Cezy Collins*

Members 2015-2016

The Board of Disciplinary Appeals is a tribunal 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 small firm to large multi-state firm, corporate counsel, family law practitioners, criminal defense lawyers, corporate and business litigators, complex commercial litigators, a city attorney, employment and education lawyers.

David N. Kitner, chair, is a partner in Strasburger & Price, LLP in Dallas, Texas. He received a B.A. from Rice University and graduated with honors from the University of Texas School of Law in 1973 where he was a member of the *Texas Law Review* and a member of the Order of the Coif. He served on the District 6A grievance committee of the State Bar of Texas from 2003–2009. He is a fellow in the American College of Trial Lawyers and served as chair of its Texas State Committee from 2012–2014. He is a life fellow of the Texas Bar Foundation and a senior life fellow of the Dallas Bar Foundation. He was appointed in September of 2012 and reappointed in 2015.

Ramon L. Echevarria II, vice chair, is counsel for the ExxonMobil law department, environmental and safety section in Houston. He joined the litigation section of ExxonMobil in 2000 and has represented the company regarding upstream environmental and well as compliance litigation issues. He is a 1993 graduate of the Texas Tech University School of Law and a graduate of the United States Military Academy, West Point, New York. Mr. Echevarria was appointed in September 2012 and appointed to a second term in 2015.

Members 2015-2016

Robert A. Black was appointed to BODA in September 2013 and reappointed to a second term in 2016. He is managing shareholder of Mehaffy Weber, P.C., where he practices mediation, arbitration, and civil litigation. He served as president of the State Bar of Texas from 2011–2012, chair of its Board of Directors, and has served on many other committees and subcommittees. Black is a past president of the Jefferson County Bar Association. He is a fellow of the Texas Bar Foundation (trustee) and a fellow of the American Bar Foundation. Black earned a B.A. from the University of Texas at El Paso and a J.D. *summa cum laude* from Texas Tech University School of Law.

Jeanne C. “Cezy” Collins serves as general counsel of the El Paso Independent School District. Ms. Collins is a former president of the National Conference of Women’s Bar Associations, Texas Women Lawyers, and the El Paso Women’s Bar Association, and a former State Bar of Texas director. In 2002–2003, she was voted Outstanding Lawyer of El Paso by the El Paso Young Lawyers Association. She received her B.A. from the University of Southern California in 1986 and her J.D. from the University of Arizona College of Law in 1991. She was appointed to BODA in 2013 and reappointed in 2016.

David M. González is a partner in Sumpter & González, L.L.P. in Austin. He is board certified in criminal law and serves as an adjunct professor in the Trial Advocacy Program at the University of Texas School of Law. He sits on the board of directors of the Capital Area Private Defender Service, serves on the executive committee of the Lloyd Lochridge Inn of Court, and is legislative counsel to the Texas Criminal Defense Lawyers Association. He has served as a special prosecutor for Travis County, Kendall County, Panola County, and the city of Cibolo. He is a member of the disciplinary committee of the U.S. District Court for the Western District of Texas and previously served on the District 9 grievance committee of the State Bar of Texas from 2012–2015. Mr. Gonzalez is a graduate of Dartmouth College and Stanford Law School. He was appointed to the Board in 2015.

Wendy Adele Humphrey is an associate professor of law and the associate dean for Admissions and Educational Effectiveness at the Texas Tech University School of Law. She is also a director of the Texas Tech University Pre-Law Academy. Dean Humphrey served on the ACTL/TYLA National Trial Competition committee for 12 years and the TYLA Moot Court Competition committee for 10 years, and she is currently the chair of the national ABA Negotiation Competition committee. Dean Humphrey is the president-elect of the Lubbock Area Bar Association and the president of Law Focused Education, Inc. She also serves on the executive committee for the Legal Writing, Research & Reasoning section of the Association of American Law Schools and is a co-chair for the Legal Writing Institute’s Pre-Law Outreach committee. Dean Humphrey has received numerous awards, including the TYLA President's Award of Merit for five consecutive years. She earned her M.Ed. and J.D. from Texas Tech University. She was appointed to the Board in 2015.

Roland K. Johnson was appointed to BODA in September 2013 and appointed to a second term in 2016, and is a shareholder in Harris, Finley & Bogle, P. C., Fort Worth. He served as president of the State Bar of Texas from 2009–2010, president of the Tarrant County Bar Association, president of the Eldon B. Mahon Inn of Court, and as chair of the State Bar Professionalism Committee. He is a sustaining life fellow of the Texas Bar Foundation and is Board Certified in Civil Trial Law. He is a member of the American Law Institute and the American Board of Trial Advocates. He earned his undergraduate and J.D. degrees from Baylor University with honors.

Members 2015-2016

Katherine A. Kinser is a partner in Kinser & Bates, LLP in Dallas. She graduated from the University of Arkansas at Little Rock and from Southern Methodist University School of Law. She holds a board certification in family law from the Texas Board of Legal Specialization. She is a fellow in the American Academy of Matrimonial Lawyers, a lifetime member of the American Academy of Matrimonial Lawyers Foundation, a sustaining life member of the Texas Family Law Foundation and a life fellow of the Texas Bar Foundation. She is a member of the Texas Academy of Family Law Specialists and received its Sam Emison Award in 2014. She served as president of the Academy from 2002 until 2003. She was appointed to the Board in 2014.

John J. “Mike” McKetta III is of counsel to Graves, Dougherty, Hearon & Moody, P.C. in Austin. He graduated from Harvard University and the University of Texas School of Law with high honors and was a member of the Order of the Coif and Chancellors. He is a member of the Lloyd Lochridge Inn of Court and served as president 2013–2014. He represents the Fifth Circuit on the ABA Standing Committee on the Federal Judiciary. He is a member of the American Law Institute and currently serves as chair of the Investment Committee. He chaired the Advertising Review Committee of the State Bar of Texas 2010–2014 and served as a member of the Disciplinary Committee of the U.S. District Court for the Western District of Texas. He is a fellow of the International Academy of Trial Lawyers, and the American College of Trial Lawyers. He is a fellow of the Texas Bar Foundation and was the recipient of organization’s Ronald D. Secrest Outstanding Trial Lawyer Award in 2010. He was appointed to the Board in 2014.

Mike Mills is a partner in Atlas, Hall & Rodriguez, L.L.P. in McAllen. He received his law degree from the University of Texas School of Law in 1976, and is a member of Phi Delta Phi honorary legal fraternity. He is a fellow, American College of Trial Lawyers; advocate, American Board of Trial Advocates; president, Hidalgo County Bar Association, 1990–1991; director, Hidalgo County Bar Association, 1988–1990; chairman, Hidalgo County Bar Association Pro Bono Project 1988–1995; State Bar of Texas District 15-B grievance committee, 1989–1995; vice chair, 1994–1995; director, Texas Association of Defense Counsel, 1994–1996; executive committee, University of Texas Law Alumni Association, 1995–2000; director, University of Texas Law Alumni Association, 1992–1995; Political Action Committee of the Texas Association of Defense Counsel, 2005–present; Texas Rio Grande Valley Legal Aid Advisory Council, 2005–present; member, American Bar Association. Mr. Mills was appointed in 2015.

Deborah G. Pullum is the city attorney for the City of Tyler, Texas. She graduated from the College of William and Mary, Marshall-Wythe School of Law in 1996 after receiving a Bachelor of Science with honors from Florida A&M University. She was a member of a State Bar grievance committee from 2006 until 2012. She is a fellow of the Texas Bar Foundation and a member of the College of the State Bar of Texas. She received merit certification in municipal law from the Texas City Attorneys Association. She was appointed to the Board in 2014.

George A. Taylor is principal of George A. Taylor, Attorney at Law in San Antonio. He graduated from St. Mary’s University School of Law in 1974. Taylor is a former first assistant district attorney of Victoria, Texas and is a director of the Texas Criminal Defense Lawyers’ Association for 2010–2016. He is also a member of the San Antonio Criminal Defense Lawyers’ Association, serving as president from 2007 until 2008. He is a fellow of the Texas Bar Foundation. He was appointed in September 2012 and appointed to a second term in 2015.

Operations

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 Texas Supreme Court created BODA by implementing the Texas Rules of Disciplinary Procedure in 1992. The Texas Supreme Court has delegated to BODA the authority to hear and determine disciplinary and disability cases. BODA proposes rules of procedure and administration to the Supreme Court of Texas for promulgation.

Website

BODA maintains a website at txboda.org. In addition to all published opinions, the website provides information about members, jurisdiction, and operations. Copies of the annual report from 2005 to the present are available. The current hearings docket is posted and all recent and archived decisions since 2002 are fully searchable. Videos of *en banc* hearings and oral arguments are available for most cases on the website and through the Board's YouTube channel. The website also has copies of the *Texas Disciplinary Rules of Professional Conduct*, the *Texas Rules of Disciplinary Procedure*, and the *BODA Internal Procedural Rules*.

Staff

BODA's staff is composed of Christine E. McKeeman, executive director and general counsel, who is in charge of all operations, advises the Board, and serves as the official records custodian; Gayle Vickers, deputy director and counsel, who assists with all operations and has primary responsibility for the disability docket, is the clerk for District Disability Committees and appeals from BODA to the Texas Supreme Court, produces this annual report, responds to inquiries from the public and attorneys, and designs and maintains the BODA website; and Jackie Truitt, executive assistant, who is responsible for classification panels, assists with office management, case intake and management, docket control, hearings coordination, and requests for information and assistance from the public and attorneys. The staff has a combined 61 years of experience working for the Board of Disciplinary Appeals.

BODA responds daily to requests for information concerning the grievance system from attorneys and the public. Except for 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 directly assist a party in a disciplinary proceeding with the underlying complaint.

En Banc Hearings

BODA considers compulsory discipline cases, reciprocal discipline cases, revocations of probation, and appeals from evidentiary judgments *en banc*, with or without hearing. BODA holds hearings in the courtroom of the Supreme Court of Texas with the invaluable assistance of the Clerk of the Supreme Court Blake A. Hawthorne and his deputy, Blanca Valdez. The State Bar of Texas provides video services and links to the BODA's YouTube channel are available on our website, txboda.org. BODA hearings, other than certain disability proceedings and appeals from dismissals or private reprimands, are open to the public.



Supreme Court of Texas Liaison
Justice Debra H. Lebrmann

Jurisdiction

BODA has jurisdiction to decide six types of disciplinary matter, Tex. Gov't Code Sections 81.072-81.0751; TRDP Part VIII. "BODA shall have and exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings." *In re State Bar of Texas*, 113 S.W.3d 730, 734 (Tex. 2003)(citing BODA IPR 1.02). With the exception of appeals from classification screening decisions, which are final, BODA decisions are appealable directly to the Supreme Court of Texas.

Original

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 on behalf of the Commission for Lawyer Discipline when an attorney has been convicted of, or placed on deferred adjudication for, an "Intentional Crime." TRDP, Part VIII. Compulsory discipline results in suspension of the attorney's license for the term of the criminal sentence or disbarment.

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 in another jurisdiction are subject to identical discipline in Texas following a disciplinary sanction in the second jurisdiction. TRDP, Part IX.

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 if the attorney violates a term or condition of probation. TRDP, Part II. If revoked, the attorney is suspended for the full term without credit for time spent on probation.

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. A district disability committee appointed by BODA holds a hearing to determine whether the attorney is disabled and certifies its finding to BODA. BODA has concurrent jurisdiction with district courts to hear petitions for reinstatement to terminate an indefinite disability suspension. TRDP, Part XII.

Appellate

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 dismissal, findings of professional misconduct, or sanction imposed. Appeals to BODA from evidentiary judgments proceed similarly to civil appeals. TRDP, Part II. BODA reviews evidentiary questions under substantial evidence and questions of law *de novo*. BODA may decide an evidentiary appeal with or without oral argument and written opinion.

Jurisdiction

Grievance Screening and Classification Appeals

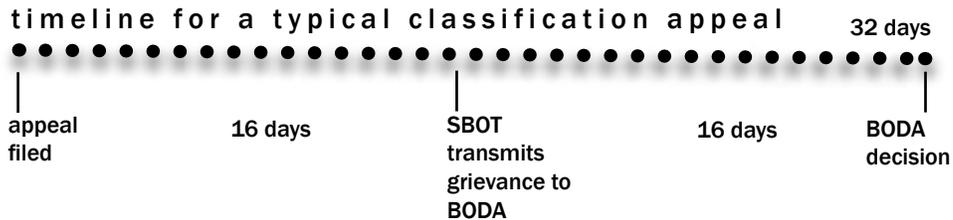
The State Bar of Texas Chief Disciplinary Counsel's Office screens every writing received that alleges professional misconduct to determine whether the writing describes conduct which, if true, would violate the Texas Disciplinary Rules of Professional Conduct. If the CDC determines that the writing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

From June 1, 2015 through May 31, 2016, approximately 28 percent of grievances dismissed by the CDC were appealed to BODA. BODA decided 1,438 appeals from classification dismissals in telephone and *en banc* conferences throughout the year.

BODA provides a one-page form written in English and Spanish that CDC includes with the notice letter to complainants explaining that the grievance was dismissed. The complainant only has to sign the form and send it to BODA by email, regular mail, or fax within 30 days of his or her receipt of the notice.

BODA sends notice to the complainant and the attorney that an appeal was filed and requests a copy of the original grievance from the CDC and, if it is a second filing, the prior grievance. BODA considers only the information available to the CDC at screening and does not review additional information sent to CDC or BODA. If a complainant sends new information to BODA, the documents are returned and the complainant is informed that he or she may instead refile the grievance with the CDC to have the additional information considered.

BODA does not review any grievance against a deceased or disbarred attorney or against one who has resigned. In such cases, the complainant is notified that the disciplinary system no longer has jurisdiction.



Once BODA receives the original grievance from CDC, on average 16 days after the request, the grievance is assigned to a three-member panel for decision. The panel and a staff attorney discuss the grievance by telephone conference, on average 16 days after the original grievance is received from the CDC, and the members vote to either affirm or grant the appeal (resulting in an upgrade of the writing from a grievance to a complaint). The granting of an appeal requires a finding that the complaint alleges one or more violations of a specific Texas Disciplinary Rule of Professional Conduct. During 2015–2015, BODA reversed approximately 10.5 percent of the appeals. BODA members can refer any appeal for consideration by the entire board *en banc*.

BODA notifies the complainant, the respondent attorney, and the CDC of its decision. If the appeal is granted, the notice includes the specific TRDPC alleged to have been violated and the complaint returns to the CDC for investigation as to just cause.

Once the dismissal is either affirmed or reversed, the appeal is complete and BODA closes its file.

Significant Decisions

June 1, 2015–May 31, 2016

Full opinions are available at txboda.org

Tex. Disciplinary R. Prof. Conduct 3.09(d) duty is broader than *Brady v. Maryland*

Schultz v. Commission for Lawyer Discipline, 2015 WL 9855916 (Texas Bd. Disp. App. 55649, 12/17/2015; no appeal). BODA held that the unambiguous language of Texas Disciplinary Rule of Professional Conduct Rule 3.09(d) requiring disclosure by the prosecution to the defense of all information that “tends to negate the guilt of the accused,” as well as the purpose of the disciplinary rule, mandated broader disclosure than required by due process pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. BODA rejected Schultz’s argument that failure to limit the ethical duty to disclose information to a due process material evidence standard would result in multiple confusing standards for prosecutors in part due to a 2014 amendment to the Texas Code of Criminal Procedure article 39.14(h) that tracked the language of Rule 3.09(d). BODA also noted that, because the purpose of Rule 3.09(d) is to protect the public, limiting the ethical duty to disclose information to the defense to the constitutional due process duty, would limit the prosecutor’s accountability to the public for misconduct occurring prior to or without a conviction.

Summary dismissals of grievances, prior to evidentiary proceeding, have no *res judicata* effect

Sebesta v. Commission for Lawyer Discipline, 2016 WL 827324 (Texas Bd. Disc. App. 56406, 2/8/2016; no appeal). BODA affirmed a disbarment judgment against Mr. Sebesta arising from his prosecution of a murder case against defendant Anthony Graves in 1994. Sebesta’s sole argument on appeal was that the evidentiary panel erred in denying his pre-trial motion to dismiss the disciplinary case on affirmative defenses of *res judicata*, collateral estoppel, and quasi-estoppel because the dismissal of a prior grievance in 2007 based on substantially the same allegations of misconduct barred the instant proceeding. BODA disagreed with Sebesta’s argument that changes to the disciplinary process in 2004 transformed the screening of grievances into an adjudicatory proceeding, finding that summary disposition panels had less investigatory tools available to them than the earlier investigatory committees who had subpoena power and could cross-examine witnesses under oath.

Intentional failure to obtain client’s child custody judgment was neglect as a matter of law

Commission for Lawyer Discipline v. A Texas Attorney, 2015 WL 5130876 (Texas Bd. Disc. App. 56619, 8/27/2015; no appeal). Attorney’s testimony that he intentionally did not complete a client’s final judgment determining child conservatorship for 20 months following the final hearing where the court rendered judgment in his client’s favor and for six months after the Commission filed evidentiary proceedings against him because he claimed that the client owed him money established a violation of Texas Disciplinary Rules of Professional Conduct Rule 1.01(b)(1) as a matter of law. The client disputed the amount the attorney claimed was owed. BODA held that injury to a client is not required to show misconduct, because delay alone can be harmful. The attorney did not participate in the appeal. BODA reversed the take-nothing judgment and imposed a private reprimand.

Collaboration and Education

June 1, 2015–May 31, 2016

Grievance Oversight Committee

In July 2015, the Board of Disciplinary Appeals met with Supreme Court of Texas' Grievance Oversight Committee Chair Catherine N. Wylie, Vice-chair Robert W. Alcorn, and Member Eric J. R. Nichols as part of the committee's review, at the request of the Supreme Court, of the State Bar's grievance screening process to ensure that it was operating as effectively and as transparently as possible. Complainants whose grievances are dismissed at the initial screening may ask BODA to independently review the decision to dismiss the grievance, as described on page 7 of this report. BODA members and GOC representatives discussed at length the appeal process. In its report to the Court, GOC concluded that, due to the expertise, dedication, and thoroughness of BODA members and highly competent and dedicated staff, the appeal process to BODA provides serious, thoughtful review and effective oversight of the CDC's administration of the grievance classification process. The report is available at txgoc.com/Reports/2016GOCReport.pdf.

Sunset Review of the State Bar

In its 2015–2017 regular review cycle, the Texas Sunset Advisory Commission is evaluating the effectiveness and efficiency of the State Bar of Texas. The State Bar's goal of protecting the public by regulating the legal profession through the attorney discipline system is a major focus of the review. While conducting the initial staff evaluation for its recommendation report to the Commission, Sunset staff met informally with the BODA executive director to more fully understand BODA's role in the disciplinary system. The discussion included BODA's history, membership, operations, original and appellate jurisdiction, and the grievance classification and appeal processes in detail. The staff report recommended that the State Bar continue for another 12 years as it is "overall well-suited to continue carrying out its unique mission." The report, the Bar's response, and full information about the Sunset process is available at sunset.texas.gov/reviews-and-reports/agencies/state-bar-texas.

Guest Lecturer in Ethics at SMU Dedman School of Law

Since 2015, BODA Chair David N. Kitner, at the invitation of Adjunct Professor Becky Gregory, has discussed the Texas Disciplinary Rules of Professional Conduct and the attorney disciplinary system as a guest lecturer each semester for the ethics class at the SMU Dedman School of Law. Mr. Kitner outlines the disciplinary process from the filing of an initial complaint through an appeal to BODA, as well as the many other possible outcomes of a grievance. The range of potential sanctions for misconduct is discussed. The most common grievance complaints are covered (neglect and lack of communication always top the list). Students ask questions and see how what they learn in class applies to the actual practice of law.

United States Attorney's Office

Following BODA's decision in *Schultz v. Commission for Lawyer Discipline*, 2015 WL 9855916 (Texas Bd. Disp. App. 55649, 12/17/2015; no appeal) (see page 8 of this report), the United States Attorney's Office for the Eastern Division of Texas invited BODA to speak to its prosecutors about the decision's holding. Specifically, federal prosecutors sought guidance about Texas Disciplinary Rule of Professional Conduct 3.09(d) which mandates disclosure "of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense." Participants watched video clips of the oral arguments in *Schultz*. Afterwards BODA member and criminal defense attorney David M. González, of Sumpter & González, accompanied by Patricia Cummings of the Dallas County District Attorney's Office, led an active training and vigorous discussion about the differences between the ethical duty imposed under the Texas Disciplinary Rules of Professional Conduct and the constitutional duty articulated in *Brady v. Maryland*, 373 U.S. 83 (1963).

GRIEVANCES

Grievances filed and classified by CDC	7,760
Upgraded <i>31 percent, a 10 percent increase from previous year</i>	2,383
Dismissed <i>69 percent, a 10 percent decrease from previous year</i>	5,054

GRIEVANCE DECISIONS APPEALED TO BODA

Total grievances dismissed by CDC	5,054
Appeals filed with BODA <i>28 percent of dismissed grievances</i>	1,407
Total Appeals disposed	1,438
Denied	1,287
Granted <i>10.5 percent</i>	151

BODA ACTIVITY

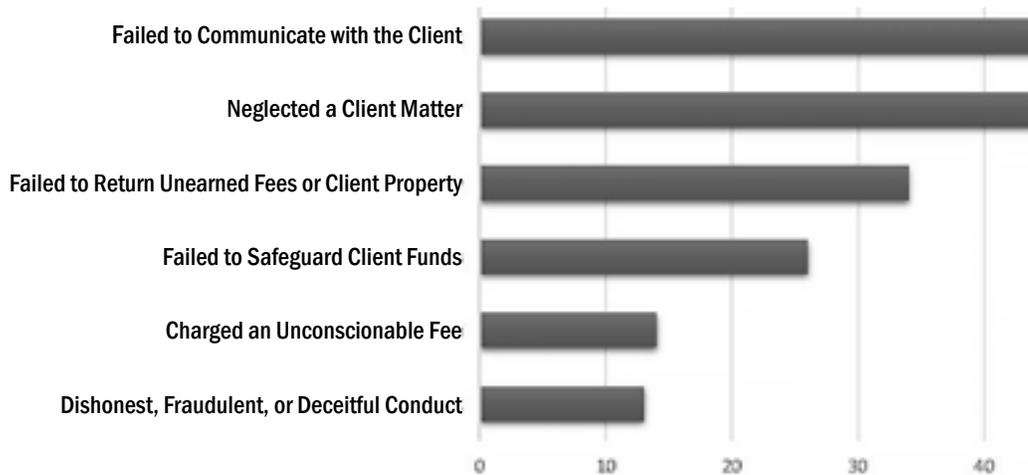
Total cases filed	1,442
Total cases decided	1,470
En banc hearings	4

BODA CASES FILED AND DECIDED

	Filed	Decided
Total	1,442	1,470
Classification appeals	1,407	1,438
Compulsory	13	10
Reciprocal	10	6
Appeals from an evidentiary judgment	6	10
Revocations of probation	0	0
Disabilities	2	2
Reinstatements	0	0
Mandamus	4	4

RULE VIOLATIONS ALLEGED

in the 151 appeals granted and returned for investigation. Over half alleged two or more violations.



DISPOSITION AFTER CLASSIFICATION APPEAL GRANTED *

Total Classification Reversals		246
Disciplinary Judgments		9
Private Reprimand	2	
Public Reprimand	4	
Fully Probated Suspension	1	
Partially Probated Suspension	1	
Pending in Litigation		23
Dismissed		
by Summary Disposition Panel		150
by Commission for Lawyer Discipline		2
by Evidentiary Panel		2
Referred to Grievance Referral Program		4
Pending Summary Disposition		23
Pending Just Cause Determination		31
Dismissed due to prior disbarment or resignation		2

**Includes 95 cases pending from 2014-2015*

BODA DECISIONS APPEALED TO THE SUPREME COURT

All were affirmed or dismissed.

Filed	6
Decided	4

Dispositions

June 1, 2015-May 31, 2016

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 on behalf of the Commission for Lawyer Discipline when an attorney has been convicted of, or placed on deferred adjudication for, an "Intentional Crime" as defined in TRDP 1.06T: that is, any Serious Crime that requires proof of knowledge or intent as an essential element or any crime involving misapplication of money or other property held as a fiduciary. Serious Crimes include barratry, any felony involving moral turpitude, any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property, or any attempt, conspiracy or solicitation of another to commit any of these. TRDP, Part VIII.

If an attorney convicted of an Intentional Crime has been sentenced to prison, BODA must disbar the attorney. If the attorney's criminal sentence is fully probated, BODA has discretion to disbar the attorney or suspend for the term of the criminal probation. If an attorney convicted of an Intentional Crime has appealed the conviction and the appeal is pending at the time the Chief Disciplinary Counsel files the compulsory action, BODA will place the attorney on interlocutory suspension pending the outcome of the appeal. BODA retains jurisdiction to enter final judgment when the appeal of the conviction is final.

During the last fiscal year, BODA decided ten petitions for compulsory discipline and motions for final judgment in compulsory cases. Additional case details are available at txboda.org.

Gwendolyn F. Climmons, State Bar of Texas card 04390000, was sentenced to 97 months in prison for one count of conspiracy to commit health care fraud and four counts of health care fraud, aiding and abetting. She was suspended from the practice of law during the appeal of her criminal conviction which was affirmed. The Supreme Court of Texas accepted Ms. Climmon's resignation in lieu of discipline. BODA case 55907.

L. Mikelé Daniels, State Bar of Texas card 05374900, pled *nolo contendere* to misapplication/fiduciary/finan 20k-110k and was placed on community supervision for five years. Mr. Daniels is suspended from the practice of law during the appeal of his criminal conviction. BODA case 57321.

Walter E. Demond, State Bar of Texas card 05736600, was sentenced to ten years of probation after being found guilty of misapplication of fiduciary property, theft by deception, and money laundering. He was suspended during the appeal of his criminal conviction which was affirmed in part and reversed in part and the sentence revised. The Supreme Court of Texas accepted Mr. Demond's resignation in lieu of discipline. BODA case 48985.

Abraham M. Fisch, State Bar of Texas card 07039900, was convicted of conspiracy to commit obstruction of justice, obstruction of justice-aiding and abetting, conspiracy to commit money laundering, money laundering-aiding and abetting, and failure to file a tax return and was sentenced to 180 months in prison. By agreement, Mr. Fisch is suspended from the practice of law pending the appeal of his criminal conviction. BODA case 57005.

Rodrigo Martinez Jr., State Bar of Texas card 13144200, was sentenced to seven years in prison for theft. By agreement, Mr. Martinez is suspended from the practice of law during the appeal of his criminal conviction. BODA case 56590.

Dispositions

June 1, 2015-May 31, 2016

William Topp Maxwell, State Bar of Texas card 24028775, was sentenced to 240 months in prison for racketeering-conspiracy, conspiracy to commit securities fraud, conspiracy to commit wire fraud, wire fraud, money laundering-conspiracy, conspiracy to obstruct justice, conspiracy to sell or transfer firearms and ammunition to a prohibited person. Mr. Maxwell is suspended from the practice of law during the appeal of his criminal conviction. BODA case 56591.

Ronald Eugene Reynolds, State Bar of Texas card 24025610, was sentenced to 365 days in prison after being found guilty of barratry and barratry ill obtain employment. Mr. Reynolds is suspended from the practice of law during the appeal of his criminal conviction. BODA case 57004.

Marc G. Rosenthal, State Bar of Texas card 17281450, was sentenced to 240 months in prison for participating in conduct and affairs of a criminal enterprise, four counts of mail fraud and aiding and abetting, tampering with a witness and aiding and abetting, tampering with official proceeding by false affidavit, tampering with official proceeding by perjured testimony, extortion under color of official right and aiding and abetting, and honest services mail fraud and aiding and abetting. Mr. Rosenthal signed an agreed interlocutory suspension of his law license during the appeal of his criminal conviction which was affirmed. He is disbarred. BODA case 53873.

Anirudh D. Sarwal, State Bar of Texas card 24002895, pled guilty to conspiracy to commit bank fraud and was sentenced to 57 months in prison. The Supreme Court of Texas accepted Mr. Sarwal's resignation in lieu of discipline. BODA case 57003.

Robert Glen Vernon Jr., State Bar of Texas card 24010756, was given deferred adjudication after he pled guilty to insurance fraud, a third degree felony. He is disbarred. Although cited to appear, he did not appear. BODA case 56271.

Reciprocal Discipline

BODA has exclusive original jurisdiction under TRDP, Part IX 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 in another jurisdiction are subject to reciprocal discipline in Texas following a disciplinary sanction in the second jurisdiction.

Arizona

Gary L. Lassen, State Bar of Texas card 11969500, was disbarred by the Supreme Court of Arizona. He is disbarred in Texas. Although cited to appear, he did not appear. BODA case 57323.

District of Columbia

Lucille Parrish, *aka* Lucille Sandra White, State Bar of Texas card 15538100, was disbarred by the District of Columbia Court of Appeals for violating D.C. Bar Rules, submitting false documents and testifying falsely before the Council of D.C., introducing false evidence to the disciplinary committee, and causing serious interference with the administration of justice. She is disbarred in Texas. Although cited to appear, she did not appear. BODA case 48980.

Michigan

James Michael O'Briant, State Bar of Texas card 00788875, was suspended by consent from the practice of law for one year by the State of Michigan Attorney Discipline Board and ordered to pay restitution. By agreement, BODA imposed the same sanction. BODA case 56273.

Dispositions

June 1, 2015–May 31, 2016

Minnesota

Mpatanishi Syanaloli Tayari Garrett, State Bar of Texas card 24073090, was indefinitely suspended from the practice of law and ineligible to apply for reinstatement for 120 days by the Supreme Court of Minnesota for willfully disobeying a court mandate, making a false or misleading statement to a tribunal, and for being convicted of willfully disobeying a court mandate. She was suspended from the practice of law in Texas for 120 days. BODA case 56589.

New Mexico

Joshua Lowell Carpenter, State Bar of Texas card 24090907, was suspended from the practice of law for two years (fully probated) by the Supreme Court of the State of New Mexico for violating the New Mexico Rules of Professional Conduct and committing a criminal act that reflected adversely on the practice of law. By agreement, BODA imposed the same sanction. BODA case 56272.

Washington

Eric Lee Fredrickson, State Bar of Texas Card 00790715, resigned in lieu of discipline from the practice of law before the Disciplinary Board of the Washington State Bar Association. The Supreme Court of Texas accepted Mr. Fredrickson's resignation in lieu of discipline. BODA case 56588.

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 filed by the Chief Disciplinary Counsel of the State Bar of Texas if the attorney violates a term or condition of probation. TRDP, Part II. The Chief Disciplinary Counsel filed no petitions to revoke probation during 2015–2016.

Disability Suspensions

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. A specialized District Disability Committee appointed by BODA first holds a hearing to determine whether the attorney is disabled and certifies its finding to BODA. BODA has concurrent jurisdiction with district courts to hear petitions for reinstatement to terminate an indefinite disability suspension. TRDP, Part XII.

Ricque Don Bobbitt, State Bar of Texas card 02534000, agreed to an indefinite disability suspension. BODA case 57117.

Ernesto Maldonado, State Bar of Texas card 12855100, agreed to an indefinite disability suspension. BODA case 57430.

Dispositions

June 1, 2015-May 31, 2016

Evidentiary Appeals

BODA has appellate jurisdiction to review a judgment by a State Bar of Texas District grievance committee evidentiary panel, including findings of professional misconduct, dismissal of a complaint, or sanction imposed. Either the Commission for Lawyer Discipline or an attorney against whom discipline has been imposed may appeal any judgment from an evidentiary proceeding. Appeals to BODA from evidentiary judgments proceed similarly to civil appeals with a notice of appeal, record, briefs, and oral argument. BODA may affirm in whole or in part, modify the judgment and affirm as modified, reverse the judgment in whole or in part and render the judgment it determines should have been entered, or reverse the judgment and remand the complaint for a new hearing. If oral argument is granted, the matter is heard *en banc* unless specially assigned to a three-member panel. TRDP, Part II.

Commission for Lawyer Discipline appealed a take-nothing judgment issued in favor of a Texas attorney by the District 1 grievance committee. BODA reversed and rendered a private reprimand, finding that the attorney neglected a legal matter in violation of TDRPC 1.01(b)(1). BODA issued an opinion in the matter. BODA case 55619.

John Hatchett Carney, State Bar of Texas card 03832200. Affirmed the judgment of partially probated suspension signed by the District 6-1 grievance committee for violations of TDRPC 1.14(a) and 1.14(c). Appealed to the Supreme Court of Texas, case 16-0366; appeal pending. BODA case 56562.

Cyril Chukwurah, State Bar of Texas card 24048394. Affirmed judgment of disbarment signed by the District 4-6 grievance committee for violations of TDRPC 1.14(b) and 8.04(a)(7). Appealed to the Supreme Court of Texas, case 16-0357; appeal pending. BODA case 56620.

Charles Chandler Davis, State Bar of Texas card 05465900. Affirmed judgment of disbarment signed by the District 14-1 grievance committee for violations of TDRPC 3.01, 3.02, 3.03(a)(1), and 8.04(a)(3). Appealed to the Supreme Court of Texas, case 15-0615; BODA decision affirmed. BODA case 55583.

Evin G. Dugas, State Bar of Texas card 06172950. Appeal dismissed for want of prosecution from a judgment of fully probated suspension signed by the District 9-1 grievance committee. BODA case 56040.

Stephen T. Leas, State Bar of Texas card 12095255. Affirmed the judgment of partially probated suspension signed by the District 12-2 grievance committee for violations of TDRPC 8.04(a)(1), 8.04(a)(3), and 8.04(a)(7). Appealed to the Supreme Court of Texas, case 15-0570; BODA decision affirmed. BODA case 55818.

William Allen Schultz, State Bar of Texas card 00794609. Affirmed judgment of fully probated suspension signed by the District 14-3 grievance committee for violations of TDRPC 3.09(d) and 3.04(a). BODA issued an opinion in the matter. BODA case 55649.

Charles J. Sebesta Jr., State Bar of Texas card 17970000. Affirmed judgment of disbarment signed by the District 8-2 grievance committee for violations of TDRPC 3.03(a)(1), 3.03(a)(5), 3.09(d), 8.04(a)(1), and 8.04(a)(3). The appeal was limited to issues of *res judicata* and estoppel. BODA issued an opinion in the matter. BODA case 56406.

Charles D. Septowski, State Bar of Texas card 18032325. Affirmed judgment of disbarment signed by the District 9-3 grievance committee for violations of TDRPC 3.03(a)(1), 7.01(d), 8.04(a)(1), 8.04(a)(3), 8.04(a)(7), and 8.04(a)(11). Appealed to the Supreme Court of Texas, case 16-0118; BODA decision affirmed. BODA case 55901.

William V. Wade, State Bar of Texas Card 20642300. Appeal dismissed for want of prosecution from a judgment of partially probated suspension by the District 4-5 grievance committee. BODA case 55205.

Mandamus

A Texas attorney asked BODA to order the District 10-1 grievance committee to quash the Commission for Lawyer Discipline's request for production of IOLTA bank records and to issue a protective order against the Chief Disciplinary Counsel of the State Bar of Texas. The request was denied. Appealed to the Supreme Court of Texas case 16-0339; appeal pending. BODA case 57093.

Jerry N. Scarbrough, State Bar of Texas Card 17717500. Asked BODA to order the District 8-5 grievance committee to stay his suspension from the practice of law. The request was denied. BODA case 56359.

Jerry N. Scarbrough, State Bar of Texas Card 17717500. Asked BODA to order the District 8-5 grievance committee to stay his suspension from the practice of law. The request was denied. BODA case 56663.

Jerry N. Scarbrough, State Bar of Texas Card 17717500. Asked BODA to order the District 8-5 grievance committee to stay his suspension from the practice of law. The request was denied. BODA case 56740.



David Kitner, Chief Justice Nathan Hecht, Justice Debra Lehrmann, and Ray Echevarria



Many thanks to Marty Jones for his leadership.
with David Kitner, left and Justice Lehrmann, right



Thanks to Jack Crews



and to Gary Gurwitz for many years of valuable service.

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