



FILED  
May 31 2022

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  
DANIEL RAY GAMEZ,  
STATE BAR CARD NO. 24034451**

§  
§  
§

CAUSE NO. 66712

**PETITION FOR RECIPROCAL DISCIPLINE**

**TO THE BOARD OF DISCIPLINARY APPEALS:**

Petitioner, the Commission for Lawyer Discipline (hereinafter called “Petitioner”), brings this action against Respondent, Daniel Ray Gamez, (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 licensed member of the State Bar of Texas and is not currently authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Daniel Ray Gamez, 1041 Avenida Amantea, La Jolla, California 92037.

3. On or about November 30, 2020, a Notice of Disciplinary Charges (Exhibit 1) was entered in the State Bar Court Hearing Department – Los Angeles, in Case No. SBC-20-O-30817, styled, *In the matter of: Daniel Ray Gamez, State Bar No. 222578, An Attorney of the State Bar*, that states in pertinent part as follows:

1. Daniel Ray Gamez (“respondent”) was admitted to the practice of law in the State of California on December 4, 2002. Respondent

was a licensed attorney at all times pertinent to these charges and is currently a licensed attorney of the State Bar of California.

COUNT 1

Case No. 19-O-28270

Rules of Professional Conduct, rule 1.1

[Failure to Perform with Competence]

2. On or about November 5, 2018, Jennifer Contreras employed respondent to perform legal services, namely, to negotiate down a debt owed to Wells Fargo Bank NA, which respondent intentionally, recklessly, grossly negligently, or repeatedly failed to perform with competence, in willful violation of Rules of Professional Conduct, rule 1.1, by failing to present a settlement offer to the attorney representing Wells Fargo after being requested to do so by Ms. Contreras and Wells Fargo's attorney.

COUNT 2

Case No. 19-O-28270

Business and Professions Code section 6068(m)

[Failure to Inform Client of Significant Developments]

3. Respondent failed to keep respondent's client, Jennifer Contreras, reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m), by failing to inform the client that on January 29, 2019, Wells Fargo led a Petition for Entry of Default and a Court Judgment against Ms. Contreras in San Diego Superior Court case no. 37-2018-0002061 3-CL-R3-NC.

COUNT 3

Case No. 19-O-28270

Business and Professions Code section 6068(m)

[Failure to Respond to Client Inquiries]

4. Respondent failed to respond promptly to numerous reasonable status inquiries made by respondent's client, Jennifer Contreras, by telephone and email between October 24, 2019 and November 20, 2019 that respondent received in a matter in which respondent had agreed to provide legal services, in willful violation of Business and Professions Code section 6068(m).

COUNT 4

Case No. 19-O-28270

Business and Professions Code section 6068(i)

[Failure to Cooperate in State Bar Investigation]

5. Respondent failed to cooperate and participate in a disciplinary investigation pending against respondent by failing to provide a substantive response to the State Bar's letters of June 8, 2020 and July 29, 2020, which respondent reviewed, that requested respondent's response to the allegations of misconduct being investigated in case no.19-O-28270, and by failing to respond to the State Bar's telephone calls on September 16, 2020 and October 13, 2020 regarding said investigation, which respondent received, in willful violation of Business and Professions Code, section 6068(i).

4. On or about March 30, 2021, an Order Entering Default and Order Enrolling Inactive (Rule 5.81 – Failure to Appear) (Exhibit 2) was entered in the State Bar Court of California Hearing Department, in Case No. SBC-20-O-30817-MC, styled, *In the matter of: Daniel Ray Gamez, State Bar No. 222578*, that states in pertinent part as follows:

... Respondent is notified that:

Because you failed to appear at trial, the Court has entered your default and deemed the facts as alleged in the notice of disciplinary charges admitted. Except as ordered by the Court, you may participate in these proceedings only if the Court sets aside your default. If you fail to timely move to set aside your default, this Court will enter an order recommending your disbarment and may recommend the imposition of monetary sanctions without further hearing or proceeding. (See Rules of Proc. of State Bar, rules 5.08 et seq. & 5.137.)

5. On or about May 21, 2021, a Petition for Disbarment After Default; [Rules Proc. Of State Bar, Rule 5.85]; Supporting Declaration of Scott D. Karpf (Exhibit 3) was filed in the State Bar Court Hearing Department – Los Angeles, in Case No. SBC-20-O-30817, styled, *In the matter of: Daniel Ray Gamez, State Bar No. 222578, An Attorney of the State Bar*, wherein the State Bar respectfully requests that the Court recommend to the Supreme Court that respondent be disbarred.

6. On or about July 15, 2021, a Decision and Order of Involuntary Inactive Enrollment (Exhibit 4) was filed in the State Bar Court of California Hearing Department – Los Angeles, in Case No. SBC-20-O-30817-MC, styled, *In the matter of: Daniel Ray Gamez, State*

*Bar No. 222578*, which states in pertinent part as follows:

**...Admitted Factual Allegations Warrant Discipline**

Upon entry of default, the factual allegations in the notice of disciplinary charges are deemed admitted and no further proof is required to establish the truth of the facts. (Rule 5.82.) As set forth below, the factual allegations in the NDC support the conclusion that Gamez is culpable as charged and violated a statute, rule or court order warranting discipline. (Rule 5.85(F)(1)(d).)

Count One – Gamez willfully violated rule 1.1 of the Rules of Professional Conduct (failure to perform with competence) by recklessly and grossly negligently failing to perform with competence after Jennifer Contreras hired him to negotiate a debt she owed to Wells Fargo Bank. Gamez failed to present a settlement offer to the attorney representing Wells Fargo as requested by Contreras and Wells Fargo’s attorney.

Count Two – Gamez willfully violated section 6068, subdivision (m) (failure to communicate), by failing to keep his client reasonably informed of significant developments when he did not tell her that on January 29, 2019, Wells Fargo filed a Petition for Entry of Default and a Court Judgment against her in San Diego Superior Court, case No. 37-2018-00020613-CL R3-NC.

Count Three – Gamez willfully violated section 6068, subdivision (m), by failing to promptly respond to his client’s reasonable status inquiries from October 24 through November 20, 2019.

Count Four – Gamez willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to two OCTC letters and two telephone calls that Gamez received, which requested a response to the allegations of misconduct being investigated in the Contreras matter.

**Disbarment is Recommended**

The court concludes that rule 5.85(F) has been satisfied and Gamez’s disbarment is recommended. In particular:

- (1) the NDC was properly served on Gamez under rule 5.25;
- (2) Gamez had actual notice of this proceeding and was properly given notice of the trial date before the entry of the default;
- (3) the default was properly entered under rule 5.81; and
- (4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that Gamez violated a statute, rule or court order warranting discipline...

## **Discipline – Disbarment**

It is recommended that Daniel Ray Gamez, State Bar Number 222578, be disbarred from the practice of law in California and his name be stricken from the roll of attorneys...

7. On or about November 30, 2021, an Order was issued in Case No. S270810 (State Bar Court No. SBC-20-O30817), styled in the Supreme Court of California En Banc, *In re Daniel Ray Gamez on Discipline* (Exhibit 5) that states in pertinent part as follows:

... The court orders that Daniel Ray Gamez (Respondent), State Bar Number 222578, is disbarred from the practice of law in California and that Respondent's name is stricken from the roll of attorneys.

Respondent must comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order.

Respondent must pay monetary sanctions to the State Bar of California Client Security Fund in the amount of \$5,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law.

8. A certified copy of the Notice of Disciplinary Charges (Exhibit 1), Order Entering Default and Order Enrolling Inactive (Rule 5.81 – Failure to Appear) (Exhibit 2), Petition for Disbarment After Default; [Rules Proc. Of State Bar, Rule 5.85]; Supporting Declaration of Scott D. Karpf (Exhibit 3), Decision and Order of Involuntary Inactive Enrollment (Exhibit 4), and Order of the Supreme Court of California (Exhibit 5), entered in the State Bar Court of California and the Supreme Court of California, are attached hereto as Petitioner's Exhibits 1 through 5 and made a part hereof for all intents and purposes as if the same was copied verbatim herein. Petitioner

expects to introduce a certified copy of Exhibits 1 through 5 at the time of hearing of this cause.

9. 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 Supreme Court of California and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

**Seana Willing**  
Chief Disciplinary Counsel

**Amanda M. Kates**  
Assistant Disciplinary Counsel  
Office of the Chief Disciplinary Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711  
Telephone: 512.427.1350  
Telecopier: 512.427.4167  
Email: akates@texasbar.com



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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 Daniel Ray Gamez, by personal service.

Daniel Ray Gamez  
1041 Avenida Amantea  
La Jolla, California 92037



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Amanda M. Kates

# Public Matter

1 STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
2 MELANIE J. LAWRENCE, No. 230102  
INTERIM CHIEF TRIAL COUNSEL  
3 MIA R. ELLIS, No. 228235  
ASSISTANT CHIEF TRIAL COUNSEL  
4 CINDY CHAN, No. 247495  
SUPERVISING ATTORNEY  
5 SCOTT D. KARPF, No. 274682  
SENIOR TRIAL COUNSEL  
6 845 South Figueroa Street  
Los Angeles, California 90017-2515  
7 Telephone: (213) 765-1161

**FILED** PB

11/30/2020

**STATE BAR COURT  
CLERK'S OFFICE  
LOS ANGELES**

8  
9 STATE BAR COURT

10 HEARING DEPARTMENT - LOS ANGELES

11  
12 In the Matter of: ) Case No. SBC-20-O-30817  
13 DANIEL RAY GAMEZ, ) NOTICE OF DISCIPLINARY CHARGES  
State Bar No. 222578, )  
14 ) (OCTC Case No. 19-O-28270)  
15 An Attorney of the State Bar. )

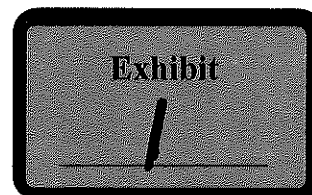
16 **NOTICE - FAILURE TO RESPOND!**

17 **IF YOU FAIL TO FILE A WRITTEN ANSWER TO THIS NOTICE**  
18 **WITHIN 20 DAYS AFTER SERVICE, OR IF YOU FAIL TO APPEAR AT**  
**THE STATE BAR COURT TRIAL:**

- 19 (1) **YOUR DEFAULT WILL BE ENTERED;**  
20 (2) **YOUR STATUS WILL BE CHANGED TO INACTIVE AND YOU**  
**WILL NOT BE PERMITTED TO PRACTICE LAW;**  
21 (3) **YOU WILL NOT BE PERMITTED TO PARTICIPATE FURTHER IN**  
**THESE PROCEEDINGS UNLESS YOU MAKE A TIMELY MOTION**  
**AND THE DEFAULT IS SET ASIDE, AND;**  
22 (4) **YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.**  
23 **SPECIFICALLY, IF YOU FAIL TO TIMELY MOVE TO SET ASIDE**  
24 **OR VACATE YOUR DEFAULT, THIS COURT WILL ENTER AN**  
25 **ORDER RECOMMENDING YOUR DISBARMENT AND MAY**  
**RECOMMEND THE IMPOSITION OF MONETARY SANCTIONS**  
**WITHOUT FURTHER HEARING OR PROCEEDING. (SEE RULES**  
**PROC. OF STATE BAR, RULES 5.80 ET SEQ. & 5.137.)**

26 The State Bar of California alleges:

27  
28 JURISDICTION





1 1. Daniel Ray Gamez ("respondent") was admitted to the practice of law in the State of  
2 California on December 4, 2002. Respondent was a licensed attorney at all times pertinent to  
3 these charges and is currently a licensed attorney of the State Bar of California.

4 COUNT 1

5 Case No. 19-O-28270  
6 Rules of Professional Conduct, rule 1.1  
7 [Failure to Perform with Competence]

8 2. On or about November 5, 2018, Jennifer Contreras employed respondent to perform  
9 legal services, namely, to negotiate down a debt owed to Wells Fargo Bank NA, which  
10 respondent intentionally, recklessly, grossly negligently, or repeatedly failed to perform with  
11 competence, in willful violation of Rules of Professional Conduct, rule 1.1, by failing to present  
12 a settlement offer to the attorney representing Wells Fargo after being requested to do so by Ms.  
13 Contreras and Wells Fargo's attorney.

14 COUNT 2

15 Case No. 19-O-28270  
16 Business and Professions Code section 6068(m)  
17 [Failure to Inform Client of Significant Developments]

18 3. Respondent failed to keep respondent's client, Jennifer Contreras, reasonably  
19 informed of significant developments in a matter in which respondent had agreed to provide  
20 legal services, in willful violation of Business and Professions Code section 6068(m), by failing  
21 to inform the client that on January 29, 2019, Wells Fargo filed a Petition for Entry of Default  
22 and a Court Judgment against Ms. Contreras in San Diego Superior Court case no. 37-2018-  
23 00020613-CL-R3-NC.

24 COUNT 3

25 Case No. 19-O-28270  
26 Business and Professions Code section 6068(m)  
27 [Failure to Respond to Client Inquiries]

28 4. Respondent failed to respond promptly to numerous reasonable status inquiries made  
by respondent's client, Jennifer Contreras, by telephone and email between October 24, 2019 and

1 November 20, 2019 that respondent received in a matter in which respondent had agreed to  
2 provide legal services, in willful violation of Business and Professions Code section 6068(m).

3  
4 COUNT 4

5 Case No. 19-O-28270  
6 Business and Professions Code section 6068(i)  
[Failure to Cooperate in State Bar Investigation]

7 5. Respondent failed to cooperate and participate in a disciplinary investigation pending  
8 against respondent by failing to provide a substantive response to the State Bar's letters of June  
9 8, 2020 and July 29, 2020, which respondent reviewed, that requested respondent's response to  
10 the allegations of misconduct being investigated in case no.19-O-28270, and by failing to  
11 respond to the State Bar's telephone calls on September 16, 2020 and October 13, 2020  
12 regarding said investigation, which respondent received, in willful violation of Business and  
13 Professions Code, section 6068(i).

14 NOTICE - INACTIVE ENROLLMENT!

15 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR  
16 COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE  
17 SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL  
18 THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO  
19 THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN  
20 INACTIVE ATTORNEY OF THE STATE BAR. YOUR INACTIVE  
21 ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE  
22 RECOMMENDED BY THE COURT.**

23 NOTICE - COST ASSESSMENT!

24 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC  
25 DISCIPLINE, YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS  
26 INCURRED BY THE STATE BAR IN THE INVESTIGATION, HEARING  
27 AND REVIEW OF THIS MATTER PURSUANT TO BUSINESS AND  
28 PROFESSIONS CODE SECTION 6086.10.**

NOTICE - MONETARY SANCTION!

**IN THE EVENT THIS MATTER RESULTS IN ACTUAL SUSPENSION,  
DISBARMENT, OR RESIGNATION WITH CHARGES PENDING, YOU  
MAY BE SUBJECT TO THE PAYMENT OF A MONETARY SANCTION  
NOT TO EXCEED \$5,000 FOR EACH VIOLATION, TO A MAXIMUM  
OF \$50,000 PER DISCIPLINARY ORDER, PURSUANT TO BUSINESS**


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**AND PROFESSIONS CODE SECTION 6086.13. SEE RULE 5.137, RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

Respectfully submitted,

THE STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL

DATED: November 25, 2020

By:   
\_\_\_\_\_  
Scott D. Karpf  
Senior Trial Counsel

## DECLARATION OF SERVICE

CASE NUMBER(s): **19-O-28270**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

### NOTICE OF DISCIPLINARY CHARGES

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**  
 - In accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.
- By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**  
 - In accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.
- By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**  
 - I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').
- By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**  
 Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.
- By Electronic Service: (CCP § 1010.6 and Rules of Proc. of State Bar, rule 5.26.2)**  
 Based on rule 5.26.2, a court order, or an agreement of the parties to accept service by electronic transmission, I caused the above-named document(s) to be transmitted by electronic means to the person(s) at the electronic address(es) listed below. If there is a signature on the document(s), I am the signer of the document(s), I am the agent of, or I am serving the document(s) at the direction of, the signer of the document(s). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,  
 Article No.: **9414 7266 9904 2171 3787 23** at Los Angeles, addressed to: (see below)

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,  
 Tracking No.: \_\_\_\_\_ addressed to: (see below)

Person Served	Business Address	Fax Number	Courtesy Copy to:
Daniel R. Gamez	Gamez Law Firm, PC 515 S Flower St. Fl 36 Los Angeles, CA 90071-2221	Electronic Address	

via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: November 30, 2020

SIGNED: \_\_\_\_\_

  
 Charles C. Bagai  
 Declarant



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST March 15, 2022

State Bar Court, State Bar of California,  
Los Angeles

By Dwain Ontlaw  
Clerk

<b>STATE BAR COURT OF CALIFORNIA</b>  <b>HEARING DEPARTMENT</b>  845 S. Figueroa Street, Los Angeles, CA 90017	FOR CLERK'S USE ONLY: <b>FILED</b> <i>SC</i>  <b>03/30/2021</b>  <b>STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO</b>
In the Matter of:  <b>DANIEL RAY GAMEZ,</b>  State Bar No. 222578.	Case No(s). SBC-20-O-30817-MC  <b>ORDER ENTERING DEFAULT AND ORDER ENROLLING INACTIVE (RULE 5.81 – FAILURE TO APPEAR)</b>

**ORDER ENTERING DEFAULT:**

As Respondent **DANIEL RAY GAMEZ** failed to appear as a party at trial and the requirements of rule 5.81(A) of the Rules of Procedure of the State Bar are satisfied, Respondent's default is entered in this proceeding, effective upon the filing of this order. All previously scheduled court dates are vacated. The court takes judicial notice of Respondent's official State Bar record address.

Respondent is notified that:

**Because you failed to appear at trial, the Court has entered your default and deemed the facts alleged in the notice of disciplinary charges admitted. Except as ordered by the Court, you may participate in these proceedings only if the Court sets aside your default. If you fail to timely move to set aside your default, this Court will enter an order recommending your disbarment and may recommend the imposition of monetary sanctions without further hearing or proceeding. (See Rules Proc. of State Bar, rules 5.80 et seq. & 5.137.)**

**ORDER ENROLLING INACTIVE:**

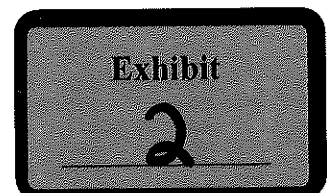
As the conditions of Business and Professions Code section 6007, subdivision (e)(1), are met, Respondent is enrolled as an inactive attorney of the State Bar of California under Business and Professions Code section 6007, subdivision (e). The inactive enrollment is effective three (3) days after service of this order. (Rules Proc. of State Bar, rule 5.250.)

**IT IS SO ORDERED.**

**Manjari Chawla**

MANJARI CHAWLA  
Judge of the State Bar Court

Dated: March 30, 2021



## CERTIFICATE OF SERVICE

(Rules Proc. of State Bar, rules 5.27(B) & 5.27.1; Code Civ. Proc., § 1013a, subd. (4).)

I, the undersigned, am a Court Specialist of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, on March 30, 2021, I deposited a true copy of the following document(s):

ORDER ENTERING DEFAULT AND ORDER ENROLLING INACTIVE (RULE 5.81  
– FAILURE TO APPEAR)

in a sealed envelope for collection and mailing on that date as follows, or I transmitted a true copy of the above document(s) on that date as follows:

- by certified mail, No. 9414 7266 9904 2108 5420 05, with return receipt requested, through the United States Postal Service at San Francisco, California, addressed as follows:

GAMEZ LAW FIRM, PC  
515 S FLOWER ST, FL 36  
LOS ANGELES, CA 90071-2221

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Scott Karpf, Office of Chief Trial Counsel, Los Angeles

I declare, under penalty of perjury under the laws of the State of California, that the information above is true and correct. Executed in San Francisco, California, on March 30, 2021.



---

Crossley, Shannon  
Court Specialist  
State Bar Court of California  
180 Howard Street  
San Francisco, CA 94105  
Ctroom1@statebarcourt.ca.gov



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST March 15, 2022

State Bar Court, State Bar of California,  
Los Angeles

By Dwain Outlaw  
Clerk



1 STATE BAR OF CALIFORNIA  
OFFICE OF CHIEF TRIAL COUNSEL  
2 MELANIE J. LAWRENCE, No. 230102  
INTERIM CHIEF TRIAL COUNSEL  
3 MIA R. ELLIS, No. 228235  
ASSISTANT CHIEF TRIAL COUNSEL  
4 CINDY CHAN, No. 247495  
SUPERVISING ATTORNEY  
5 SCOTT D. KARPf, No. 274682  
SENIOR TRIAL COUNSEL  
6 845 South Figueroa Street  
Los Angeles, California 90017-2515  
7 Telephone: (213) 765-1161

**FILED** *sc*  
**05/21/2021**  
**STATE BAR COURT**  
**CLERK'S OFFICE**  
**SAN FRANCISCO**

8  
9 STATE BAR COURT  
10 HEARING DEPARTMENT - LOS ANGELES  
11



12 In the Matter of: ) Case No. SBC-20-O-30817  
13 DANIEL RAY GAMEZ, )  
State Bar No. 222578, ) PETITION FOR DISBARMENT AFTER  
14 ) DEFAULT; [Rules Proc. Of State Bar, Rule  
An Attorney of the State Bar. ) 5.85]; SUPPORTING DECLARATION OF  
15 ) SCOTT D. KARPf

16 The Office of Chief Trial Counsel of the State Bar ("State Bar") hereby petitions the  
17 State Bar Court to recommend respondent's disbarment to the Supreme Court, pursuant to rule  
18 5.85 of the Rules of Procedure of the State Bar of California (hereinafter "rule"), based on  
19 respondent's failure to appear at trial and failure to have the default set aside or vacated with the  
20 time period prescribed. This petition is based upon the attached declaration and the court file in  
21 this matter.

22 **I. THIS PETITION FOR DISBARMENT IS NECESSARY BECAUSE**  
23 **RESPONDENT'S DEFAULT HAS BEEN ENTERED AND THE DEFAULT HAS**  
**NOT BEEN SET ASIDE OR VACATED.**

24 Rule 5.85 provides in part as follows: "If the attorney fails to have the default set aside or  
25 vacated, the Office of Chief Trial Counsel must file a petition requesting the Court to  
26 recommend the attorney's disbarment to the Supreme Court."

27 On March 30, 2021, respondent failed to appear at the duly noticed State Bar Court trial  
28 in this matter.

1 On March 30, 2021, the State Bar Court filed an order entering default for failure to  
2 appear at trial in accordance with rule 5.81(B).

3 Since the entry of default, respondent has failed to file a motion to set aside or vacate the  
4 default.

5 **II. THIS PETITION IS TIMELY FILED**

6 As authorized by rule 5.85(C)(1), this petition is being filed 46 days or more after the  
7 default order was served.

8 **III. THIS PETITION IS SUPPORTED BY A DECLARATION CONTAINING THE  
9 INFORMATION REQUIRED BY RULE 5.85(A)**

10 Rule 5.85(A) requires that petitions for disbarment “must be supported by one or more  
11 declarations stating whether:

- 12 (1) any contact with the attorney has occurred since the default was entered;  
13 (2) any other investigations or disciplinary charges are pending against the attorney;  
14 (3) the attorney has a prior record of discipline; and  
15 (4) the Client Security Fund has paid out claims as a result of the attorney’s misconduct.”

16 **A. CONTACT WITH THE ATTORNEY SINCE THE DEFAULT WAS ENTERED.**

17 On March 30, 2021, respondent contacted Trial Counsel at his State Bar telephone  
18 number. Respondent claimed that he had mixed up the dates of the pretrial conference and the  
19 trial. Trial Counsel told respondent that regardless of the excuse that his default had been entered  
20 based on his failure to appear at trial and that he would be placed on involuntary inactive status  
21 within 72 hours. Trial Counsel also advised respondent that in order to set aside the default, he  
22 would need file a motion to set aside the default within 45 days. Since that conversation, no one  
23 from the State Bar Office of Chief Trial Counsel has received contact from respondent.

(Declaration of Scott D. Karpf, attached.)

24 **B. OTHER PENDING INVESTIGATIONS OR DISCIPLINARY CHARGES**

25 Other than the current matter, there are seven pending investigations or disciplinary  
26 charges pending against respondent. (Declaration of Scott D. Karpf, attached.)

27 ///

28 ///

1 **C. PRIOR DISCIPLINE**

2 Respondent does not have a prior record of discipline. (Declaration of Scott D. Karpf,  
3 attached.)

4 **D. CLIENT SECURITY FUND PAYMENTS**

5 There are two pending Client Security Fund (“CSF”) cases but CSF has not yet paid out  
6 any claims as a result of respondent's misconduct. (Declaration of Scott D. Karpf, attached.)

7 **IV. THE REQUIREMENTS FOR MANDATORY DISBARMENT HAVE BEEN**  
8 **SATISFIED**

9 Rule of Procedure 5.85(F)(1) provides in pertinent part as follows:

10 If the attorney fails to file a response or the Court denies a motion to set aside or vacate  
11 the default and all other relief from default, the Court must recommend the attorney’s  
12 disbarment if the evidence shows:

- 12 (a) The notice of disciplinary charges was served on the attorney properly;
- 13 (b) The attorney had actual notice or reasonable diligence was used to notify the  
14 attorney of the proceedings prior to the entry of default;
- 15 (c) The default was properly entered; and
- 16 (d) The factual allegations deemed admitted in the notice of disciplinary charges ...  
17 support a finding that the attorney violated a statute, rule or court order that would  
18 warrant the imposition of discipline.

18 **A. THE NDC WAS SERVED ON THE ATTORNEY PROPERLY**

19 The State Bar Court file similarly contains a valid proof of service. Respondent  
20 thereafter appeared in this proceeding. The order entering default established that the NDC was  
21 properly served on respondent.

22 **B. THE ATTORNEY HAD ACTUAL NOTICE OR REASONABLE DILIGENCE WAS**  
23 **USED TO NOTIFY THE ATTORNEY OF THE PROCEEDINGS PRIOR TO ENTRY**  
24 **OF THE DEFAULT.**

25 Respondent appeared in this proceeding. (See Court file.) Thereafter, the State Bar Court  
26 served a notice of trial on respondent by first class mail in the manner prescribed by rule  
27 5.81(A)(2). (See State Bar Court file.)

27 ///  
28 ///

1 **C. THE DEFAULT WAS PROPERLY ENTERED.**

2 The order for entry of default was properly served upon respondent in the manner  
3 required by law and it contained the language required by rule 581(B). (See State Bar Court  
4 file.)

5 **D. THE FACTUAL ALLEGATIONS DEEMED ADMITTED IN THE NDC SUPPORT A**  
6 **FINDING THAT THE ATTORNEY VIOLATED A STATUTE, RULE OR COURT**  
7 **ORDER THAT WOULD WARRANT THE IMPOSITION OF DISCIPLINE.**

8 The facts alleged in the NDC were deemed admitted when this Court entered  
9 respondent's default. (Rule 5.82(2).) These admitted facts support a finding that respondent  
10 committed the violations alleged in the NDC, thus warranting the imposition of discipline.

11 **V. CONCLUSION**

12 The State Bar respectfully requests that the Court recommend to the Supreme Court that  
13 respondent be disbarred.

14 Respectfully submitted,

15 THE STATE BAR OF CALIFORNIA  
16 OFFICE OF CHIEF TRIAL COUNSEL



17 DATED: May 17, 2021

18 By: \_\_\_\_\_

19 Scott D. Karpf  
20 Senior Trial Counsel

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**DECLARATION OF SCOTT D. KARPf**

I, Scott D. Karpf, declare:

1. All statements made herein are based on my personal knowledge, except for those stated to be under information and belief.

2. I am an attorney licensed to practice law in the State of California. I am employed as a Senior Trial Counsel in the Office of Chief Trial Counsel of the State Bar of California. This matter is assigned to me for prosecution of disciplinary charges against respondent.

3. On March 30, 2021, respondent failed to appear at trial in this matter and he default was entered by the Court.

4. On March 30, 2021, respondent contacted me at my State Bar telephone number. Respondent claimed that he had mixed up the dates of the pretrial conference and the trial. I told respondent that his default had been entered based on his failure to appear at trial and that he would be placed on involuntary inactive status within 72 hours. I also advised respondent that regardless of the excuse, in order to set aside the default, he would need file a motion to set aside the default within 45 days. Since that conversation, as I believe, neither I nor anyone else from the State Bar Office of Chief Trial Counsel has received contact from respondent.

5. On May 17, 2021, I reviewed the State Bar's computer database and determined that, other than the current matter, there are seven pending investigations against respondent.

6. Respondent does not have a prior record of Discipline.

7. Based on my review of the State Bar's computer database on May 17, 2021, I have determined that there are two pending Client Security Fund ("CSF") cases but that CSF has not yet paid out any claims as a result of respondent's misconduct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 17th day of May, 2021 at Los Angeles, California.



\_\_\_\_\_  
Scott D. Karpf

**DECLARATION OF SERVICE**

CASE NUMBER(s): **SBC-20-O-30817**

I, the undersigned, am over the age of eighteen (18) years and not a party to the within action, whose business address and place of employment is the State Bar of California, 845 South Figueroa Street, Los Angeles, California 90017, declare that:

- on the date shown below, I caused to be served a true copy of the within document described as follows:

**PETITION FOR DISBARMENT AFTER DEFAULT; [RULES PROC. OF STATE BAR, RULE 5.85];  
SUPPORTING DECLARATION OF SCOTT D. KARPf**

- By U.S. First-Class Mail: (CCP §§ 1013 and 1013(a))**  **By U.S. Certified Mail: (CCP §§ 1013 and 1013(a))**  
 - in accordance with the practice of the State Bar of California for collection and processing of mail, I deposited or placed for collection and mailing in the City and County of Los Angeles.
- By Overnight Delivery: (CCP §§ 1013(c) and 1013(d))**  
 - I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for overnight delivery by the United Parcel Service ('UPS').
- By Fax Transmission: (CCP §§ 1013(e) and 1013(f))**  
 Based on agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed herein below. No error was reported by the fax machine that I used. The original record of the fax transmission is retained on file and available upon request.
- By Electronic Service: (CCP § 1010.6 and Rules of Proc. of State Bar, rule 5.26.2)**  
 Based on rule 5.26.2, a court order, or an agreement of the parties to accept service by electronic transmission, I caused the above-named document(s) to be transmitted by electronic means to the person(s) at the electronic address(es) listed below. If there is a signature on the document(s), I am the signer of the document(s), I am the agent of, or I am serving the document(s) at the direction of, the signer of the document(s). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

(for U.S. First-Class Mail) in a sealed envelope placed for collection and mailing at Los Angeles, addressed to: (see below)

(for Certified Mail) in a sealed envelope placed for collection and mailing as certified mail, return receipt requested,  
 Article No.: **9414 7266 9904 2171 3834 13** at Los Angeles, addressed to: (see below)

(for Overnight Delivery) together with a copy of this declaration, in an envelope, or package designated by UPS,  
 Tracking No.: \_\_\_\_\_ addressed to: (see below)

Person Served	Business Address	Fax Number	Courtesy Copy to:
Daniel R. Gamez	Gamez Law Firm, PC 515 S Flower St. Fl 36 Los Angeles, CA 90071-2221		Gamez Law Firm, PC 515 S Flower St. Fl 36 Los Angeles, CA 90071-2221
		Electronic Address	

- via inter-office mail regularly processed and maintained by the State Bar of California addressed to:

N/A

I am readily familiar with the State Bar of California's practice for collection and processing of correspondence for mailing with the United States Postal Service, and overnight delivery by the United Parcel Service ('UPS'). In the ordinary course of the State Bar of California's practice, correspondence collected and processed by the State Bar of California would be deposited with the United States Postal Service that same day, and for overnight delivery, deposited with delivery fees paid or provided for, with UPS that same day.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date on the envelope or package is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: May 21, 2021

SIGNED: /s/Alicia Bubion  
**ALICIA BUBION**  
 Declarant



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST March 15, 2022

State Bar Court, State Bar of California,  
Los Angeles

By Daniel Orlow  
Clerk

**FILED** *SC*

**07/15/2021**

**STATE BAR COURT  
CLERK'S OFFICE  
SAN FRANCISCO  
Public Matter**

**STATE BAR COURT OF CALIFORNIA**

**HEARING DEPARTMENT - LOS ANGELES**

In the Matter of	)	Case No. SBC-20-O-30817-MC
	)	
DANIEL RAY GAMEZ,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
State Bar No. 222578.	)	ENROLLMENT
_____	)	

This court entered Daniel Ray Gamez’s default after his failure to appear at trial in this disciplinary proceeding. As Gamez failed to move to set aside the default, the Office of Chief Trial Counsel of the State Bar of California (OCTC) now petitions the court for a recommendation of his disbarment. (Rules Proc. of State Bar, rule 5.85.<sup>1</sup>) The case was submitted for decision on June 16, 2021. Finding that the requirements are met, the court grants the petition and recommends that Gamez be disbarred from the practice of law.

**JURISDICTION**

Gamez has been a licensed attorney of the State Bar of California since his admission on December 4, 2002.

**FINDINGS AND CONCLUSIONS**

Under rule 5.85, the court must recommend disbarment on the showing of four factors, three involving procedure: a) proper service of the notice of disciplinary charges; b) actual notice or reasonable diligence in notifying the attorney of the proceedings before the entry of default;

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.





and c) proper entry of default. The final requirement is of substance: (d) the court must find that there is a satisfactory factual basis for discipline. (Rules Proc. of State Bar, rule 5.85(F)(1)(d).)

All four factors have been met here.

### **Procedural Requirements Satisfied**

#### *Service of Notice of Disciplinary Charges*

On November 30, 2020, OCTC filed and properly served the Notice of Disciplinary Charges (NDC) by certified mail, return receipt requested, on Gamez. He filed an answer on January 8, 2021.

#### *Notice of Trial Proceedings before Entry of Default*

On January 11, 2021, the court held a status conference where it set trial for March 30. OCTC and Gamez appeared at the conference. The notice of trial was properly served on Gamez by electronic mail pursuant to rules 5.4(29) and 5.26.1(A). Gamez failed to appear for trial on the scheduled date.

#### *Entry of Default*

Upon Gamez's failure to appear for trial on March 30, 2021, the court entered his default. The default order was properly served on Gamez at his State Bar attorney records address by certified mail, return receipt requested. (Rule 5.81(B).) The order notified Gamez that if he did not timely move to set aside his default, the court would recommend his disbarment. The order also placed Gamez on involuntary inactive status under Business and Professions Code section 6007, subdivision (e),<sup>2</sup> effective three days after service. Gamez has since remained inactive.

Gamez did not file a motion to set aside the default by the deadline of May 19, 2021. On May 21, 2021, OCTC properly prepared and served the petition for disbarment on Gamez at his State Bar attorney records address, satisfying the pleading requirements. (Rule 5.85(A) [petition

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<sup>2</sup> All further references to sections are to the Business and Professions Code.

must be supported by a factual declaration].) As required by rule 5.85(A), OCTC reported that: (1) since default was entered, OCTC has had contact with Gamez;<sup>3</sup> (2) he has other disciplinary investigations pending; (3) Gamez has no prior record of discipline; and (4) the Client Security Fund has not made payments resulting from his misconduct. Gamez has not responded to the petition for disbarment or moved to set aside or vacate the default.

### **Admitted Factual Allegations Warrant Discipline**

Upon entry of default, the factual allegations in the notice of disciplinary charges are deemed admitted and no further proof is required to establish the truth of the facts. (Rule 5.82.) As set forth below, the factual allegations in the NDC support the conclusion that Gamez is culpable as charged and violated a statute, rule or court order warranting discipline. (Rule 5.85(F)(1)(d).)

Count One – Gamez willfully violated rule 1.1 of the Rules of Professional Conduct (failure to perform with competence) by recklessly and grossly negligently failing to perform with competence after Jennifer Contreras hired him to negotiate a debt she owed to Wells Fargo Bank. Gamez failed to present a settlement offer to the attorney representing Wells Fargo as requested by Contreras and Wells Fargo’s attorney.

Count Two – Gamez willfully violated section 6068, subdivision (m) (failure to communicate), by failing to keep his client reasonably informed of significant developments when he did not tell her that on January 29, 2019, Wells Fargo filed a Petition for Entry of Default and a Court Judgment against her in San Diego Superior Court, case No. 37-2018-00020613-CL R3-NC.

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<sup>3</sup> On the date Gamez’s default was entered (March 30, 2021), Gamez contacted OCTC to explain that he mixed up the trial and pretrial conference dates. OCTC informed him that his default had been entered and that a motion to set aside the default had to be filed within 45 days.

Count Three – Gamez willfully violated section 6068, subdivision (m), by failing to promptly respond to his client’s reasonable status inquiries from October 24 through November 20, 2019.

Count Four – Gamez willfully violated section 6068, subdivision (i) (failure to cooperate), by failing to provide a substantive response to two OCTC letters and two telephone calls that Gamez received, which requested a response to the allegations of misconduct being investigated in the Contreras matter.

**Disbarment is Recommended**

The court concludes that rule 5.85(F) has been satisfied and Gamez’s disbarment is recommended. In particular:

(1) the NDC was properly served on Gamez under rule 5.25;

(2) Gamez had actual notice of this proceeding and was properly given notice of the trial date before the entry of the default;

(3) the default was properly entered under rule 5.81; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that Gamez violated a statute, rule or court order warranting discipline.

**Monetary sanctions are recommended**

As the NDC provided Gamez with notice that he could be subject to monetary sanctions, and it was filed after April 1, 2020, the effective date of rule 5.137, the court recommends that Gamez be ordered to pay \$5,000 in monetary sanctions. This amount is warranted based on the nature of the violations, specifically that Gamez failed to perform with competence, which led to the filing of a petition for entry of default and a court judgement against his client. In addition, he did not participate in this proceeding, despite actual knowledge of this disciplinary matter.

Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar.  
Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

Under Business and Professions Code section 6007, subdivision (c)(4), the court orders that Daniel Ray Gamez, State Bar number 222578, be involuntarily enrolled as an inactive attorney of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: July 15, 2021



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MANJARI CHAWLA  
Judge of the State Bar Court

**CERTIFICATE OF ELECTRONIC SERVICE**

(Rules Proc. of State Bar, rule 5.27.1.)

I, the undersigned, certify that I am a Court Specialist of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, on July 15, 2021, I transmitted a true copy of the following document(s):

**DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

by electronic service to SCOTT KARPFF at the following electronic service address as defined in rule 5.4(29) and as provided in rule 5.26.1 of the Rules of Procedure of the State Bar:

Scott.Karpf@calbar.ca.gov

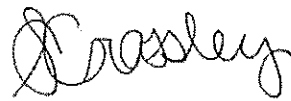
by electronic service to DANIEL GAMEZ at the following electronic service address as defined in rule 5.4(29) and as provided in rule 5.26.1 of the Rules of Procedure of the State Bar:

daniel@gamezlawfirm.com

The above document(s) was/were served electronically. My electronic service address is ctroom1@calbar.ca.gov and my business address is 180 Howard St, 6th Floor, San Francisco, CA 94105

I declare, under penalty of perjury under the laws of the State of California, that the information above is true and correct.

Date: July 15, 2021



---

Shannon Crossley  
Court Specialist  
State Bar Court



The document to which this certificate is affixed is a full, true and correct copy of the original on file and of record in the State Bar Court.

ATTEST March 15, 2022

State Bar Court, State Bar of California,  
Los Angeles

By Dwain Onthaw  
Clerk

## RECOMMENDATIONS

### Discipline - Disbarment

It is recommended that Daniel Ray Gamez, State Bar Number 222578, be disbarred from the practice of law in California and his name be stricken from the roll of attorneys.

### California Rules of Court, Rule 9.20

The court also recommends that Gamez be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.<sup>4</sup>

### Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment. Unless the time for payment of discipline costs is extended pursuant to subdivision (c) of section 6086.10, costs assessed against an attorney who is actually suspended or disbarred must be paid as a condition of reinstatement or return to active status.

## MONETARY SANCTIONS

It is further recommended that Gamez be ordered to pay monetary sanctions to the State Bar of California Client Security Fund in the amount of \$5,000 in accordance with Business and

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<sup>4</sup> For purposes of compliance with rule 9.20(a), the operative date for identification of “clients being represented in pending matters” and others to be notified is the filing date of the Supreme Court order, not any later “effective” date of the order. (*Athearn v. State Bar* (1982) 32 Cal.3d 38, 45.) Further, Gamez is required to file a rule 9.20(c) affidavit even if he has no clients to notify on the date the Supreme Court filed its order in this proceeding. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.) In addition to being punished as a crime or contempt, an attorney’s failure to comply with rule 9.20 is, inter alia, cause for disbarment, suspension, revocation of any pending disciplinary probation, and denial of an application for reinstatement after disbarment. (Cal. Rules of Court, rule 9.20(d).)

(State Bar Court No. SBC-20-O-30817)

S270810

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

In re DANIEL RAY GAMEZ on Discipline

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The court orders that Daniel Ray Gamez (Respondent), State Bar Number 222578, is disbarred from the practice of law in California and that Respondent's name is stricken from the roll of attorneys.

Respondent must comply with California Rules of Court, rule 9.20, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order.

Respondent must pay monetary sanctions to the State Bar of California Client Security Fund in the amount of \$5,000 in accordance with Business and Professions Code section 6086.13 and rule 5.137 of the Rules of Procedure of the State Bar. Monetary sanctions are enforceable as a money judgment and may be collected by the State Bar through any means permitted by law.

Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment, and may be collected by the State Bar through any means permitted by law.

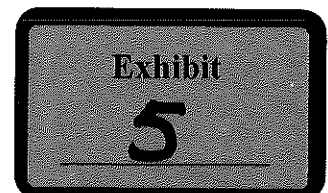
I, Jorge Navarrete, Clerk of the Supreme Court of the State of California, do hereby certify that the preceding is a true copy of an order of this Court as shown by the records of my office.

Witness my hand and the seal of the Court this

17 day of May 20 22  
Month

By: [Signature]  
Deputy

CANTIL-SAKAUYE  
Chief Justice





# 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.