



FILED  
Mar. 12, 2021

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

IN THE MATTER OF  
LEILA LOUISE HALE,  
STATE BAR CARD NO. 24088781

§  
§  
§

CAUSE NO. 65263

**PETITION FOR RECIPROCAL DISCIPLINE**

**TO THE BOARD OF DISCIPLINARY APPEALS:**

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Leila Louise Hale, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at 1661 W. Horizon Ridge Parkway, Ste. 200, Henderson, NV 89012-3519.

3. On or about May 30, 2018, a Complaint (Exhibit 1) was filed with the State Bar of Nevada, Southern Nevada Disciplinary Board, in a matter styled: *State Bar of Nevada, Complainant, vs. Leila L. Hale, Esq., NV Bar No. 7368, Respondent*, in Case Nos. OBC 17-0374 and OBC 17-0553, alleging violation of the following Nevada Rules of Professional Conduct: Count One RPC 1.4 (Communication); Count Two RPC 1.5 (Fees); Count Three RPC 1.8 (Conflict

of Interests: Current Clients: Specific Rules); Count Four RPC 5.3 (Responsibilities Regarding Non-Lawyer Assistant); Count Five RPC 7.3 (Communications with Prospective Clients).

4. On or about December 3, 2018, Findings of Fact, Conclusions of Law and Recommendation (Exhibit 2) was filed with the State Bar of Nevada, Southern Nevada Disciplinary Board, in a matter styled: *State Bar of Nevada, Complainant, vs. Leila L. Hale, Esq., NV Bar No. 7368, Respondent*, in Case Nos. OBC 17-0374; and OBC 17-0553, which states in pertinent part:

...This Panel was designated by the Southern Nevada Disciplinary Board Chair and has jurisdiction over this matter;

Respondent is now, and at all times pertinent herein was, a licensed attorney in the State of Nevada. Respondent, at all times pertinent herein, had a place of business for the practice of law in Clark County, Nevada;

Respondent was first licensed to practice law in the State of Nevada on September, 2000;

Based on the testimony of witnesses and the documentary evidence presented during the hearing, the Panel finds that the State Bar proved by clear and convincing evidence that Respondent violated Rule of Professional Conduct ("RPC") 1.5 (Fees). The Panel also finds that the State Bar did not prove by clear and convincing evidence that Respondent violated RPC 1.4 (Communication), RPC 1.8 (Conflict of Interests: Current Clients: Specific Rules), RPC 5.3 (Responsibilities Regarding Non-Lawyer Assistants), or RPC 7.3 (Communications with Prospective Clients).

5. On or about January 9, 2020, a Conditional Guilty Plea in Exchange for a Stated Form of Discipline (Exhibit 3) was filed with the State Bar of Nevada, Southern Nevada Disciplinary Board, in a matter styled: *State Bar of Nevada, Complainant, vs. Leila L. , Esq., NV Bar No. 7368, Respondent*, in Case Nos. OBC 17-0374 and OBC 17-0553, which states in pertinent part:

...Respondent pleads guilty and admits that she violated the Rules of Professional Conduct as set forth in Counts 2 and four of the Formal Complaint filed on May 30, 2018, and in accordance with the Stipulation of

Facts stated herein violated the following Rules of Professional Conduct ("RPC"): 1.5 (Fees) and 5.3 (Responsibilities Regarding Nonlawyer Assistants).

6. Counts 2 and 4 of the Conditional Guilty Plea in Exchange for a Stated Form of

Discipline establish the following:

Fermin G. Serafin is a non-attorney employee of the Hale Law Firm. Serafin met with grievant, Rochelle Mortensen, in Mortenson's home on January 10, 2017 to discuss Respondent representing Mortenson in a personal injury case. Serafin presented Mortensen with a retainer agreement. Serafin also presented Mortensen with various other legal documents, including a HIPPA release, a general authorization, a Medicare, Medicaid, and SCHIP Extension act reporting form, and a power of attorney form.

It was Respondent's policy for non-attorney staff to conduct home visits such as this, and to read through the provided forms with the client. The Mortensen Retainer states that it is a contingency fee agreement. However, in the event of withdraw by Hale Law, or the early discharge of Hale Law by Mortensen, the Mortensen Retainer calls for, at a minimum, a "combined firm rate" of \$1,000 per hour for "all attorney and staff time".

On March 23, 2017, Mahogeny Bennett was involved in a vehicle accident. The next day, March 24, 2017, she retained attorney Adam Kutner to represent her. On March 28, 2017 Bennett was involved in a second vehicle accident. On March 29, 2017 Serafin went to Bennett's residence and provided a home visit regarding the March 28 car accident. At the March 29, 2017 home visit, Serafin presented Bennett with the same types of forms as described in the Mortensen matter, above. In addition, Serafin advised Bennett regarding potential attorney's liens that may be filed by Kutner if she were to switch counsel. Serafin also advised Bennett that it would be best to have one attorney handle both matters.

Serafin presented Bennett with a retainer agreement. The Bennett Retainer states that it is a contingency fee agreement. However, in the event of withdraw by Hale Law, or the early discharge of Hale Law by Bennett, the Bennett Retainer calls for, at a minimum, a "combined firm rate" of \$1,000 per hour for "all attorney and staff time".

Shortly after the home visit, Bennett terminated Kutner and retained Hale Law. On April 5, 2017, Bennett terminated Hale Law and again retained Kutner to handle both accidents. On April 17, 2017, Respondent created, but did not sign, a notice of attorney's lien in the amount of \$7,950, representing 7.45 hours of fees plus costs. However, a June 27, 2017 attorney's lien notice, also unsigned, covering the same period of time and the same entries as the April 17, 2017, attorney's lien shows that only 1.6 hours was [sic] billed by an attorney, with 5.2 hours billed by paralegals

and 1.1 hours billed by assistants. In the second notice of attorney's lien, the attorney rate is \$1,000 per hour, the Paralegal rate is \$200 per hour, and the assistant rate is \$125 per hour. Respondent's agreement, which contained a billing rate of \$1,000 per hour for all time billed by any employee of the firm, was unreasonable.

Serafim's conduct during the home visits of Bennett and Mortensen constituted the unauthorized practice of law.

7. On or about January 28, 2020, a Public Reprimand (Exhibit 4) was filed with the State Bar of Nevada, Southern Nevada Disciplinary Board, in a matter styled: *State Bar of Nevada, Complainant, vs. Leila L. , Esq., NV Bar No. 7368, Respondent*, in Case Nos. OBC 17-0374 and OBC 17-0553, which states in pertinent part:

...In light of your violation of Rules of Professional Conduct 1.5 and 5.3, you are hereby PUBLICLY REPRIMANDED.

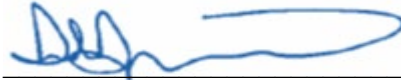
8. Certified copies of the Complaint, Findings of Fact, Conclusions of Law and Recommendation, Conditional Guilty Plea in Exchange for a Stated Form of Discipline, and Public Reprimand, are attached hereto as Petitioner's Exhibits 1 through 4, and made a part hereof for all intents and purposes as if the same were copied verbatim herein. Petitioner expects to introduce certified copies of Exhibits 1 through 4 at the time of the hearing in this case.

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 enter a judgment imposing discipline identical with that imposed by the Supreme Court of the State of Nevada 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 Leila Louise Hale by personal service.

Leila Louise Hale  
1661 W. Horizon Ridge Parkway, Ste. 200  
Henderson, NV 89012-3519



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Amanda M. Kates



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.

ATTEST Belinda Felix  
State Bar of Nevada  
By [Signature]  
Legal Administrator



**FILED**

**MAY 30 2018**

STATE BAR OF NEVADA  
BY: [Signature]  
OFFICE OF BAR COUNSEL

Case Nos.: OBC 17-0374 and OBC 17-0553

**STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA, )  
)  
Complainant, )  
vs. )  
)  
Leila L. Hale, Esq., )  
NV BAR NO. 7368 )  
)  
Respondent. )

**COMPLAINT**

TO: Leila L. Hale, Esq.  
HALE INJURY LAW  
1661 West Horizon Ridge Pkwy Ste. 200  
Henderson, NV 89012

PLEASE TAKE NOTICE that pursuant to Supreme Court Rule ("SCR") 105(2) a **VERIFIED RESPONSE OR ANSWER** to this Complaint must be filed with the Office of Bar Counsel, State Bar of Nevada, 3100 W. Charleston, Blvd, Suite 100, Las Vegas, Nevada, 89102, within twenty (20) days of service of this Complaint. The procedure regarding service is addressed in Supreme Court Rule 109.

**GENERAL ALLEGATIONS**

1. Complainant, State Bar of Nevada ("State Bar") alleges that Respondent, Leila L. Hale, Esq. ("Respondent"), Nevada Bar No. 7368, who is currently an active member of the State Bar of Nevada having been licensed to practice law in the State of Nevada since September 2000, and at all times pertinent to this Complaint having a principal place of business for the practice of

1 law located in Clark County, Nevada, has engaged in acts of misconduct in violation of the Nevada  
2 Rules of Professional Conduct ("RPC"), warranting the imposition of professional discipline as set  
3 out herein.

4 2. Fermin G. Serafin ("Serafin") is a non-attorney employee of the Hale Law Firm  
5 ("Hale Law").

6 3. Respondent previously received a Reprimand based on *inter alia*, her use of a non-  
7 attorney employee to conduct all communications with her client.

8 4. Grievant Rochelle Mortensen ("Mortensen") met with Serafin on January 10, 2017 to  
9 seek representation in a personal injury case.

10 5. Mortensen believed, based on this meeting, that Serafin was an attorney and would be  
11 representing her.

12 6. Serafin presented Mortensen with a retainer agreement (the "Mortensen Retainer").

13 7. The Mortensen Retainer was signed only by Mortensen.

14 8. The Mortensen Retainer states that it is a contingency fee agreement.

15 9. However, in the event of withdraw by Hale Law, or the early discharge of Hale Law  
16 by Mortensen, the Mortensen Retainer calls for, at a minimum, a "combined firm rate" of \$1,000 per  
17 hour for "all attorney and staff time".

18 10. On January 27, 2017, Mortenson sent an email to Serafin and Heldder Vileda,  
19 ("Vileda"), another non-attorney employee of Hale Law. Hale was not copied on the email.

20 11. The January 27, 2017 email from Mortenson terminated Hale Law, Serafin, and  
21 Vileda.

22 12. Despite having had the case for less than a month, and despite the Mortensen Retainer  
23 being a contingency fee agreement, Hale informed the State Bar that she relinquished attorney's fees  
24 of \$4,340 to Mortenson in order to "bring her continued beratement of our firm to an end."

1           13.    On March 23, 2017, Mahogeny Bennett ("Bennett") was involved in a vehicle  
2 accident.

3           14.    The next day, March 24, 2017, she retained attorney Adam Kutner ("Kutner") to  
4 represent her.

5           15.    On March 28, 2017 Bennett was involved in a second vehicle accident.

6           16.    Bennett's vehicle was rendered non-operational by the second vehicle accident, and  
7 she telephoned for a tow truck.

8           17.    Robert Uster ("Robert") and Billy Uster ("Billy"), are tow-truck drivers who took the  
9 call to assist Bennett at the scene of the second accident. (collectively, Robert and Billy will be  
10 referred to as the "Usters").

11          18.    Robert is a client of Hale Law.

12          19.    The Usters moved Bennett's car into a nearby parking lot and advised Bennett that  
13 they could get her "a lot of money" for the car accident.

14          20.    When Bennett told the Usters that she already had counsel, they told her that  
15 Respondent was better firm than Kutner and, that if she signed up with Respondent, they would tow  
16 both of her cars which had been damaged to the location of her choice, and that all towing services  
17 would be free of charge.

18          21.    The Usters then towed both of her damaged cars to her home in Las Vegas.

19          22.    The Usters never billed Bennett for the towing services provided.

20          23.    Hale Law telephoned Bennett to solicit a consultation regarding the March 28 vehicle  
21 accident.

22          24.    On March 29, 2017 Serafin went to Bennett's residence and provided a consultation  
23 regarding the March 28 car accident.

24          25.    In the consultation, Serafin made disparaging remarks about Kutner and advised  
25 Bennet to fire Kutner and retain Hale Law.



1           26.     Serafin presented Bennett with a retainer agreement (the "Bennett Retainer").  
2           27.     The Bennett Retainer was signed only by Bennett.  
3           28.     The Bennett Retainer states that it is a contingency fee agreement.  
4           29.     However, in the event of withdraw by Hale Law, or the early discharge of Hale Law  
5 by Bennett, the Bennett Retainer calls for, at a minimum, a "combined firm rate" of \$1,000 per hour  
6 for "all attorney and staff time".

7           30.     Bennett believed, based upon this meeting, that Serafin was an attorney who would  
8 be representing her.

9           31.     Based on the meeting with Serafin, Bennett terminated Kutner and retained Hale  
10 Law.

11          32.     On April 5, 2017, Respondent telephoned Bennett to introduce herself. Respondent  
12 also directed Bennett to a Budget Rent-A-Car, where Bennett was provided with a rental car paid for  
13 by Hale Law.

14          33.     Also on April 5, 2017, Bennett terminated Hale Law and again retained Kutner to  
15 handle both accidents.

16          34.     On April 17, 2017, Respondent created, but did not sign, a notice of attorney's lien in  
17 the amount of \$7,950, representing 7.45 hours of fees plus costs. However, a June 27, 2017,  
18 attorney's lien notice, also unsigned, covering the same period of time and the same entries as the  
19 April 17, 2017, attorney's lien shows that only 1.6 hours was billed by an attorney, with 5.2 hours  
20 billed by paralegals and 1.1 hours billed by assistants. In the second notice of attorney's lien, the  
21 attorney rate is \$1,000 per hour, the Paralegal rate is \$200 per hour, and the assistant rate is \$125 per  
22 hour.

23     ///

24     ///

25     ///

1 Count One

2 **RPC 1.4 (Communication)**

3 35. RPC 1.4 requires a lawyer to communicate with clients as follows:

4 (a) A lawyer shall:

5 (1) Promptly inform the client of any decision or circumstance  
6 with respect to which the client's informed consent is required by these  
7 Rules;

8 (2) Reasonably consult with the client about the means by which  
9 the client's objectives are to be accomplished;

10 (3) Keep the client reasonably informed about the status of the  
11 matter;

12 (4) Promptly comply with reasonable requests for information; and

13 (5) Consult with the client about any relevant limitation on the  
14 lawyer's conduct when the lawyer knows that the client expects assistance  
15 not permitted by the Rules of Professional Conduct or other law.

16 (b) A lawyer shall explain a matter to the extent reasonably necessary  
17 to permit the client to make informed decisions regarding the  
18 representation.

19 36. Respondent failed to adequately communicate with her clients by having non-lawyer  
20 assistants actively handle her clients' cases, including initial consultations and case work.

21 37. Respondent's conduct resulted in harm as her clients were unaware of the non-lawyer  
22 status of these assistants and believed they were communicating with an attorney.

23 38. In light of the foregoing, including without limitation paragraphs 2 through 29,  
24 Respondent has violated RPC 1.4 (Communication).

25 Count Two

**RPC 1.5 (Fees)**

39. RPC 1.5 prohibits a lawyer from making an agreement for, charging, or collecting an  
unreasonable fee or an unreasonable amount for expenses.

40. A billing rate of \$1,000 per hour, particularly for non-attorney time is unreasonable.

41. Respondent's violations of RPC 1.5 (Fees) caused harm to Grievants as they were  
charged an unreasonable rate for Respondent's services.

42. In light of the foregoing, including without limitation paragraphs 2 through 34, Respondent has violated RPC 1.5 (Fees).

### Count Three

### RPC 1.8 (Conflict of Interests: Current Clients: Specific Rules)

43. RPC 1.8(e) prohibits an attorney from providing financial assistance to a client in connection with pending or contemplated litigation other than court costs and expenses of litigation in certain non-applicable circumstances.

44. Respondent violated RCP 1.8(e) by paying for Bennett's rental car.

45. Respondent conduct resulted in harm as it is conduct which harms fair trade among lawyers in this jurisdiction.

46. In light of the foregoing, including without limitation paragraphs 2 through 37, Respondent has violated RPC 1.8 (Conflict of Interests: Current Clients: Specific Rules).

## Count Four

### **RPC 5.3 (Responsibilities Regarding Non-Lawyer Assistants)**

47. RPC 5.3 requires a lawyer who possesses managerial authority in a law firm over nonlawyers employed or retained by or associated with a lawyer to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.

48. By performing the work of attorneys in the Mortenson and Bennet matters, Serafin and Vileda were engaged in the unauthorized practice of law.

49. Respondent ordered, or with the knowledge of the specific conduct, ratified the conduct of Serafin and Vileda.

50. Respondent was a partner of Hale law, and had direct supervisory authority over Serafin and Vileda.

51. Respondent knew of Serafin and Vileda's conduct at a time when its consequences could have been avoided or mitigated, but failed to take reasonable remedial action.

52. Respondent's conduct resulted in harm as it allowed Mortenson and Bennett to believe they were speaking with and receiving legal advice from an attorney at Respondent's firm.

53. In light of the foregoing, including without limitation paragraphs 2 through 44, Respondent has violated RPC 5.3 (Responsibilities regarding non-lawyer assistants).

### Count Five

### **RPC 7.3 (Communications with Prospective Clients)**

54. RPC 7.3 prohibits an attorney from soliciting professional employment from a prospective client with whom the lawyer has no family or prior professional relationship by mail, in person or otherwise, when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain.

55. Respondent engaged in prohibited solicitation by having the Usters communicate with Bennett regarding Respondent's services, and by providing free towing services in exchange for the employment of Respondent.

56. Respondent engaged in prohibited solicitation by telephoning Bennett after being informed of Bennett's accident by the Usters.

57. Respondent's conduct resulted in harm as it creates an unfair business environment for lawyers in this jurisdiction and overcomes the ability of a layperson to choose their counsel free of the attorney's influence.

58. In light of the foregoing, including without limitation paragraphs 2 through 49, Respondent has violated RPC 7.3 (Communications with Prospective Clients).

**WHEREFORE, Complainant prays as follows:**

1. That a hearing be held pursuant to Nevada Supreme Court Rule 105;

2. That Respondent be assessed the costs of the disciplinary proceeding pursuant to SCR 120(1); and,

3. That pursuant to SCR 102, such disciplinary action be taken by the Southern Nevada Disciplinary Board against Respondent as may be deemed appropriate under the circumstances.

DATED this 30 day of May, 2018.

**STATE BAR OF NEVADA**

By:

**Matthew R. Carlyon, Assistant Bar Counsel**  
Nevada Bar No. 12712  
3100 W. Charleston Blvd, Ste. 100  
Las Vegas, Nevada 89102



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.

ATTEST

State Bar of Nevada

By Belinda Felix  
Legal Administrator



**FILED**

**DEC 03 2018**

**STATE BAR OF NEVADA**

BY: [Signature]  
**OFFICE OF BAR COUNSEL**

**STATE BAR OF NEVADA**

**SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,

Complainant,

vs.

LEILA L. HALE, ESQ.,  
BAR NO. 7368

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND RECOMMENDATION**

This matter came before a designated Formal Hearing Panel ("Panel") of the Southern Nevada Disciplinary Board at 9:00 a.m. on November 2, 2018. The presiding Panel consisted of Christopher Laurent, Esq., Chair, Frank Toddre, Esq., and lay-member Roger Meertins. The State Bar of Nevada ("State Bar") was represented by Assistant Bar Counsel Matthew R. Carlyon. Leila L. Hale, Esq. ("Respondent") was also present, and was represented by her counsel, William B. Terry, Esq. and Alexandra Athmann-Marcoux, Esq.

Based upon the pleadings filed, witness testimony, the documents admitted into evidence and the legal arguments presented, the Panel, based on a unanimous decision, submits the following Findings of Fact, Conclusion of Law and Recommendation.

**FINDINGS OF FACT**

1. This Panel was designated by the Southern Nevada Disciplinary Board Chair and has jurisdiction over this matter.

**EXHIBIT**

**2**

1           2.       Respondent is now, and at all times pertinent herein was, a licensed attorney in the  
2 State of Nevada. Respondent, at all times pertinent herein, had a place of business for the practice of  
3 law in Clark County, Nevada.

4           3.       Respondent was first licensed to practice law in the State of Nevada on September,  
5 2000.

6           4.       Based on the testimony of witnesses and the documentary evidence presented during  
7 the hearing, the Panel finds that the State Bar proved by clear and convincing evidence that  
8 Respondent violated Rule of Professional Conduct ("RPC") 1.5 (Fees). The Panel also finds that the  
9 State Bar did not prove by clear and convincing evidence that Respondent violated RPC 1.4  
10 (Communication), RPC 1.8 (Conflict of Interests: Current Clients: Specific Rules), RPC 5.3  
11 (Responsibilities Regarding Non-Lawyer Assistants), or RPC 7.3 (Communications with Prospective  
12 Clients).

13          5.       The Panel also reviewed the evidence to determine the appropriate application of  
14 aggravating and mitigating factors pursuant to Supreme Court Rule ("SCR") 102.5. The Panel found  
15 that Respondent had the following aggravating factors pursuant to SCR 102.5(1): (a) prior disciplinary  
16 offenses; and, (i) substantial experience in the practice of the law. The Panel found that Respondent  
17 had the following mitigating factors pursuant to SCR 102.5(2): (d) timely good faith effort to make  
18 restitution; (e) full and free disclosure to disciplinary authority; (g) character or reputation; (j) delay in  
19 the disciplinary proceeding; and, (k) interim rehabilitation.

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24 ///

25 ///

6. The decision of the Panel by a unanimous vote was to dismiss all counts and direct the State Bar to issue a Letter of Caution pursuant to SCR 102(8) regarding RPC 1.5 (Fees).

DATED this 30 day of November, 2018.


**SOUTHERN NEVADA DISCIPLINARY BOARD**

By:

Christopher J. Laurent, Esq., Chair  
Formal Hearing Panel Chair

Respectfully submitted:

STATE BAR OF NEVADA  
Daniel M. Hooge, Bar Counsel

By:   
Matthew R. Carlyon, Assistant Bar Counsel  
3100 West Charleston Boulevard  
Las Vegas, Nevada 89102  
(702) 382- 2200

**Attorney for the State Bar of Nevada**



1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies a true and correct copy of the foregoing **FINDINGS OF**  
3 **FACT, CONCLUSIONS OF LAW AND RECOMMENDATION** was deposited in the United  
4 States Mail at Las Vegas, Nevada, postage fully pre-paid thereon for first-class regular mail addressed  
5 to:

6 Leila Hale, Esq.  
7 c/o William B. Terry, Esq.  
8 Alexandra Athmann-Marcoux, Esq.  
9 530 South Seventh Street  
10 Las Vegas, NV 89101

11 *and via email to:*

- 12 1. Christopher J. Laurent, Esq. (Panel Chair): Christopher.Laurent@clarkcountynvda.com;  
13 2. William B. Terry, Esq., and Alexandra Athmann-Marcoux, Esq. (Counsel for Respondent):  
14 info@williamterrylaw.com;  
15 3. Matthew Carlyon, Esq. (Assistant Bar Counsel): matthewc@nvbar.org;

16 DATED this 14<sup>th</sup> day of December, 2018.

17 By: 

18 Tiffany Bradley, an employee of  
19 the State Bar of Nevada.  
20  
21  
22



ATTEST Belinda Felix

State Bar of Nevada

By: [Signature]  
Legal Administrator



**FILED**

JAN 09 2020

STATE BAR OF NEVADA

BY: [Signature]  
OFFICE OF BAR COUNSEL

# STATE BAR OF NEVADA

## SOUTHERN NEVADA DISCIPLINARY BOARD

STATE BAR OF NEVADA,

Complainant,

vs.

Leila L. Hale, ESQ.,  
Nevada Bar No. 7368

Respondent.

CONDITIONAL GUILTY PLEA IN  
EXCHANGE FOR A STATED FORM OF  
DISCIPLINE

Leila L. Hale, Esq. ("Respondent"), Bar No. 7368 hereby tenders to Assistant Bar Counsel for the State Bar of Nevada a Conditional Guilty Plea ("Plea") pursuant to Nevada Supreme Court Rule ("SCR") 113(1) and agrees to the imposition of the following Stated Form of Discipline in the above-captioned cases.

### I. CONDITIONAL GUILTY PLEA

Through the instant Plea, Respondent agrees and admits as follows:

1. Respondent pleads guilty and admits that she violated the Rules of Professional Conduct as set forth in Counts 2 and four of the Formal Complaint filed on May 30, 2018, and in accordance with the Stipulation of Facts stated herein violated the following Rules of Professional Conduct ("RPC"): 1.5 (Fees) and 5.3 (Responsibilities Regarding Nonlawyer Assistants).

2. The Southern Nevada Disciplinary Board has jurisdiction over Respondent and the subject matter of these proceedings pursuant to SCR 99.

**EXHIBIT**

**3**

## II. STIPULATION OF FACTS

The facts stipulated to and agreed upon between Respondent and the State Bar of Nevada in support of this conditional plea are as follows:

3. Respondent is currently an active member of the State Bar of Nevada having been licensed to practice law in the State of Nevada since September, 2000, and at all times pertinent to this Complaint having a principal place of business for the practice of law located in Clark County, Nevada.

1. Fermin G. Serafin ("Serafin") is a non-attorney employee of the Hale Law Firm ("Hale Law").

2. Serafin met with grievant, Rochelle Mortensen ("Mortensen"), in Mortenson's home on January 10, 2017 to discuss Respondent representing Mortenson in a personal injury case.

3. Serafin presented Mortensen with a retainer agreement (the "Mortensen Retainer").

4. Serafin also presented Mortensen with various other legal documents, including a HIPPA release, a general authorization, a Medicare, Medicaid, and SCHIP Extension act reporting form, and a power of attorney form.

5. It was Respondent's policy for non-attorney staff to conduct home visits such as this, and to read through the provided forms with the client.

6. The Mortensen Retainer states that it is a contingency fee agreement.

7. However, in the event of withdraw by Hale Law, or the early discharge of Hale Law by Mortensen, the Mortensen Retainer calls for, at a minimum, a "combined firm rate" of \$1,000 per hour for "all attorney and staff time".

8. On March 23, 2017, Mahogeny Bennett ("Bennett") was involved in a vehicle accident.

9. The next day, March 24, 2017, she retained attorney Adam Kutner ("Kutner") to represent her.

10. On March 28, 2017 Bennett was involved in a second vehicle accident.

1           11.     On March 29, 2017 Serafin went to Bennett's residence and provided a home visit  
2 regarding the March 28 car accident.

3           12.     At the March 29, 2017 home visit, Serafin presented Bennett with the same types of  
4 forms as described in the Mortensen matter, above.

5           13.     In addition, Serafin advised Bennett regarding potential attorney's liens that may be filed  
6 by Kutner if she were to switch counsel.

7           14.     Serafin also advised Bennett that it would be best to have one attorney handle both  
8 matters.

9           15.     Serafin presented Bennett with a retainer agreement (the "Bennett Retainer").

10          16.     The Bennett Retainer states that it is a contingency fee agreement.

11          17.     However, in the event of withdraw by Hale Law, or the early discharge of Hale Law by  
12 Bennett, the Bennett Retainer calls for, at a minimum, a "combined firm rate" of \$1,000 per hour for  
13 "all attorney and staff time".

14          18.     Shortly after the home visit, Bennett terminated Kutner and retained Hale Law.

15          19.     On April 5, 2017, Bennett terminated Hale Law and again retained Kutner to handle  
16 both accidents.

17          20.     On April 17, 2017, Respondent created, but did not sign, a notice of attorney's lien in  
18 the amount of \$7,950, representing 7.45 hours of fees plus costs. However, a June 27, 2017 attorney's  
19 lien notice, also unsigned, covering the same period of time and the same entries as the April 17, 2017,  
20 attorney's lien shows that only 1.6 hours was billed by an attorney, with 5.2 hours billed by paralegals  
21 and 1.1 hours billed by assistants. In the second notice of attorney's lien, the attorney rate is \$1,000 per  
22 hour, the Paralegal rate is \$200 per hour, and the assistant rate is \$125 per hour.

23          21.     Respondent's agreement, which contained a billing rate of \$1,000 per hour for all time  
24 billed by any employee of the firm, was unreasonable.  
25

22. Serafim's conduct during the home visits of Bennett and Mortensen constituted the unauthorized practice of law.

**III. Respondent's Mental State, Duty violated, and Injury or Potential Injury**

32. Respondent's mental state pursuant to the violation of RPC 1.5 was negligent, that is, "the failure of the lawyer to heed a substantial risk that circumstances exist or that a result will follow, which failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *ABA Standards for Imposing Lawyer Sanctions*, pg. xxi.

33. Respondent's mental state pursuant to the violation of RPC 5.3 was knowing, with, "the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." *Id.*

34. By engaging in the above misconduct, Respondent violated her duties to the public and the profession.

35. As a result of Respondent's misconduct, little or no injury or potential injury occurred.

**IV. AGGRAVATION / MITIGATION**

Pursuant to SCR 102.5(1) (Aggravation and mitigation), the Parties considered the following *aggravating* factors in considering the discipline to be imposed:

- (a). prior disciplinary offenses
- (d). multiple offenses
- (i). substantial experience in the practice of law

Pursuant to SCR 102.5(2) (Aggravation and mitigation), the Parties considered the following *mitigating* factors in considering the discipline to be imposed:

- (d). timely good faith effort to make restitution.
- (e). full and free disclosure to disciplinary authority or cooperative attitude toward proceedings.
- (k). interim rehabilitation.

1 (m). remorse

2 V. STATED FORM OF DISCIPLINE

3 Based upon the above and foregoing, the Parties agree to recommend attorney discipline subject  
4 to the following conditions:

5 1. The baseline sanction for the agreed misconduct is Reprimand, issued by the Panel pursuant  
6 to *In re Lerner*, 197 P.3d 1067 (Nev. 2008), "Lerner assisted in Rowe's unauthorized practice, which  
7 was undertaken in accordance with Lerner's usual policies and practices... For this violation, a public  
8 reprimand is the appropriate discipline."

9 2. Respondent agrees to accept a public reprimand, pursuant to SCR 102(6).

10 3. Respondent agrees to pay SCR 120 fees in the amount of \$1,500.00, and to pay the actual  
11 costs of the disciplinary proceeding. That amount is to be paid in full within Ninety (90) days of  
12 receipt of a billing from the State Bar.

13 VI. CONDITIONAL AGREEMENT BY THE STATE BAR

14 Conditional to approval of this plea by the Southern Nevada Formal Disciplinary Panel, and an  
15 Order approving this plea by the Nevada Supreme Court, the State Bar agrees to:

16 1. Dismiss all remaining allegations of violations of Rules, with prejudice.

17 VII. APPROVAL OF RESPONDENT

18 Having read the Plea and being satisfied with it, the same is hereby approved by Respondent.

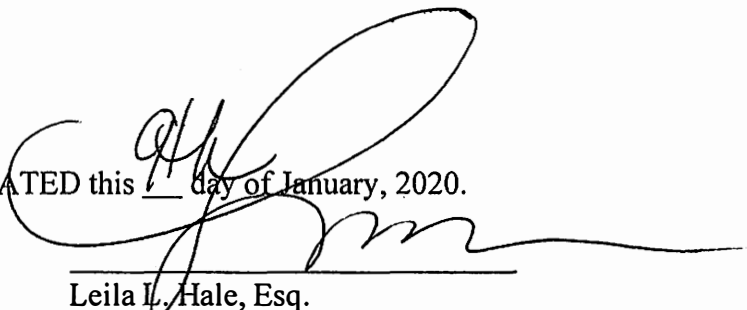
19 Respondent acknowledges that she has had the opportunity to discuss this Plea with counsel of  
20 her choosing. Respondent fully understands the terms and conditions set forth herein and enters into  
21 this Plea freely and voluntarily.

22 ///


23 ///

24 ///

1 DATED this 9 day of January, 2020.

2   
3 Leila L. Hale, Esq.  
4 NV Bar No. 7368  
1661 W. Horizon Ridge Pkwy, Suite 200  
Henderson, NV 89012

5 DATED this 9 day of January, 2020


6   
7 William B. Terry, Esq.  
8 NV Bar No.  
530 South Seventh Street  
Las Vegas, NV 89101  
Counsel for Leila Hale.

9 **VIII. APPROVAL OF BAR COUNSEL**

10 Having read the Plea tendered by Respondent and being satisfied with the contents therein, I  
11 hereby approve and recommend the Plea for approval by the Formal Hearing Panel.

12 DATED this 9 day of January, 2020.

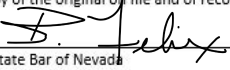
13 STATE BAR OF NEVADA  
14 Daniel Hooge, Bar Counsel

15  
16 By:   
17 Matthew Canyon  
18 Assistant Bar Counsel  
19 Nevada Bar No. 12712  
20 3100 W. Charleston Blvd.  
21 Suite 100  
22 Las Vegas, Nevada, 89102  
23  
24  
25



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.

ATTEST

  
State Bar of Nevada

By Belinda Felix  
Legal Administrator

Case Nos. OBC17-0374  
OBC17-0553



FILED

JAN 28 2020

STATE BAR OF NEVADA  
BY:   
OFFICE OF BAR COUNSEL

**STATE BAR OF NEVADA  
SOUTHERN NEVADA DISCIPLINARY BOARD**

STATE BAR OF NEVADA,  
Complainant,

vs.

LEILA HALE, ESQ.,  
NV BAR NO. 7368  
Respondent.

**PUBLIC REPRIMAND**

To: Leila L. Hale, Esq.  
C/O: William B. Terry, Esq.  
530 South Seventh Street  
Las Vegas, NV 89101  
*Counsel for Leila Hale.*

Rochelle Mortensen ("Mortensen") and Mahogeny Bennett ("Bennett") retained you to represent them in personal injury matters. In both matters, you, pursuant to office policy, sent your non-attorney employee, Fermin G. Serafin ("Serafin") to conduct 'home visits'. In these visits, Serafin presented the potential clients with retainer agreements as well as various other legal documents, including a HIPPA release, a general authorization, a Medicare, Medicaid, and SCI-HP Extension act reporting form, and a power of attorney form. Pursuant to your office policy, Serafin read through these documents with Mortensen and Bennett.

**EXHIBIT**

**4**



1 In addition, in the Bennet matter, Serafin advised Bennett regarding potential attorney's  
2 liens that may be filed by her already-retained counsel if she were to switch counsel. Serafin also  
3 advised Bennett that it would be best to have one attorney handle both matters.

4 Pursuant to the decision of the Supreme Court, these home visits constituted the  
5 unauthorized practice of law, and, as such, Serafin's actions under your supervision constitute a  
6 violation of Rule of Professional Conduct 5.3 (Responsibilities Regarding Non-Lawyer  
7 Assistants).

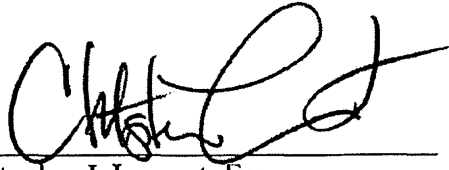
8 Further, in both the Bennett and Mortensen matters, the retainer agreement presented  
9 contained a provision which, in the event of withdraw by Hale Law, or the early discharge of Hale  
10 Law called for, at a minimum, a "combined firm rate" of \$1,000 per hour for "all attorney and staff  
11 time".

12 As this panel found, such an agreement is unreasonable and violates Rule of Professional  
13 Conduct 1.5 (Fees).

14 In light of your violation of Rules of Professional Conduct 1.5 and 5.3, you are hereby  
15 PUBLICLY REPRIMANDED.

16 DATED this 28<sup>th</sup> day of January, 2020.

17  
18 SOUTHERN NEVADA DISCIPLINARY BOARD

19  
20   
21 By: \_\_\_\_\_  
22 Christopher J. Laurent, Esq.,  
23 Formal Hearing Panel Chair  
24  
25

# INTERNAL PROCEDURAL RULES

## BOARD OF DISCIPLINARY APPEALS

*Current through June 21, 2018*

### Contents

|  |          |
|--|----------|
| <b>I. GENERAL PROVISIONS.....</b>  | <b>1</b> |
| Rule 1.01. Definitions.....  | 1        |
| Rule 1.02. General Powers .....  | 1        |
| Rule 1.03. Additional Rules in Disciplinary Matters .....  | 1        |
| Rule 1.04. Appointment of Panels .....   | 1        |
| Rule 1.05. Filing of Pleadings, Motions, and Other Papers.....   | 1        |
| Rule 1.06. Service of Petition .....   | 2        |
| Rule 1.07. Hearing Setting and Notice .....  | 2        |
| Rule 1.08. Time to Answer .....  | 2        |
| Rule 1.09. Pretrial Procedure .....  | 2        |
| Rule 1.10. Decisions .....   | 3        |
| Rule 1.11. Board of Disciplinary Appeals Opinions.....   | 3        |
| Rule 1.12. BODA Work Product and Drafts .....  | 3        |
| Rule 1.13. Record Retention.....   | 3        |
| Rule 1.14. Costs of Reproduction of Records.....   | 3        |
| Rule 1.15. Publication of These Rules.....   | 3        |
| <b>II. ETHICAL CONSIDERATIONS.....</b>   | <b>3</b> |
| Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases..... | 3        |
| Rule 2.02. Confidentiality.....  | 4        |
| Rule 2.03. Disqualification and Recusal of BODA Members .....  | 4        |
| <b>III. CLASSIFICATION APPEALS .....</b>   | <b>4</b> |
| Rule 3.01. Notice of Right to Appeal .....   | 4        |
| Rule 3.02. Record on Appeal.....   | 4        |
| <b>IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS.....</b>  | <b>4</b> |
| Rule 4.01. Perfecting Appeal.....  | 4        |
| Rule 4.02. Record on Appeal.....   | 5        |
| Rule 4.03. Time to File Record.....  | 6        |
| Rule 4.04. Copies of the Record .....  | 6        |
| Rule 4.05. Requisites of Briefs .....  | 6        |
| Rule 4.06. Oral Argument.....  | 7        |
| Rule 4.07. Decision and Judgment .....   | 7        |
| Rule 4.08. Appointment of Statewide Grievance Committee.....   | 8        |
| Rule 4.09. Involuntary Dismissal.....  | 8        |
| <b>V. PETITIONS TO REVOKE PROBATION.....</b>   | <b>8</b> |
| Rule 5.01. Initiation and Service.....   | 8        |
| Rule 5.02. Hearing.....  | 8        |

|   |           |
|---|-----------|
| <b>VI. COMPULSORY DISCIPLINE.....</b>                           | <b>8</b>  |
| Rule 6.01. Initiation of Proceeding .....                       | 8         |
| Rule 6.02. Interlocutory Suspension .....                       | 8         |
| <b>VII. RECIPROCAL DISCIPLINE .....</b>                         | <b>9</b>  |
| Rule 7.01. Initiation of Proceeding .....                       | 9         |
| Rule 7.02. Order to Show Cause.....                             | 9         |
| Rule 7.03. Attorney’s Response.....                             | 9         |
| <b>VIII. DISTRICT DISABILITY COMMITTEE HEARINGS .....</b>       | <b>9</b>  |
| Rule 8.01. Appointment of District Disability Committee .....   | 9         |
| Rule 8.02. Petition and Answer .....                            | 9         |
| Rule 8.03. Discovery .....                                      | 9         |
| Rule 8.04. Ability to Compel Attendance.....                    | 10        |
| Rule 8.05. Respondent’s Right to Counsel .....                  | 10        |
| Rule 8.06. Hearing.....   | 10        |
| Rule 8.07. Notice of Decision.....                              | 10        |
| Rule 8.08. Confidentiality.....                                 | 10        |
| <b>IX. DISABILITY REINSTATEMENTS .....</b>                      | <b>10</b> |
| Rule 9.01. Petition for Reinstatement .....                     | 10        |
| Rule 9.02. Discovery .....                                      | 10        |
| Rule 9.03. Physical or Mental Examinations .....                | 10        |
| Rule 9.04. Judgment .....                                       | 10        |
| <b>X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS .....</b> | <b>11</b> |
| Rule 10.01. Appeals to the Supreme Court.....                   | 11        |

# 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.