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

IN THE MATTER OF	**§**	
PAUL HOUSTON LAVALLE	**§**	**CAUSE NO. 64480**
STATE BAR CARD NO. 11998625	**§**	

MOTION FOR ENTRY OF JUDGMENT OF DISBARMENT

TO THE HONORABLE BOARD:

COMES NOW, Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), and files this its Motion for Entry of Judgment of Disbarment, showing as follows:

1. On March 10, 2021, Petitioner filed its Second Amended Petition for Compulsory Discipline against Respondent, Paul Houston LaValle, (hereinafter called "Respondent") seeking compulsory discipline based upon Respondent's following conviction:

> On or about February 28, 2020, a Judgment of Conviction by Jury was entered in Cause No. 19CR0918, styled *The State of Texas v. Paul Houston LaValle*, in the 56th Judicial District Court of Galveston County, Texas, wherein Respondent was found guilty of Tamper Fabricating Physical Evidence and was placed on community supervision for five (5) years and ordered court costs in the amount of $290.

2. On May 17, 2021, an Interlocutory Order of Suspension was entered by the Board of Disciplinary Appeals which provides in pertinent part, as follows:

> The Board retains jurisdiction to enter a final judgment in this matter when the criminal appeal is final.

3. Following the appeal by Respondent of his criminal conviction in Cause No. 19-CR-0918, a Judgment (Exhibit 1) and a Memorandum Opinion (Exhibit 2) were issued by the Fourteenth Court of Appeals, on or about September 2, 2021, in Cause No. No. 14-20-00245-CR, *Paul Houston LaValle v. The State of Texas,* which affirmed the judgment and conviction.

4. On or about December 16, 2021, a Mandate was issued (Exhibit 3) by the Court of Appeals for the Fourteenth District of Texas, in Cause No. 14-20-00245-CR*, Paul Houston LaValle v. The State of Texas,* which affirmed the judgment of conviction entered by the trial court.

5. True and correct copies of the Judgment, Memorandum Opinion, and Mandate issued by the Court of Appeals for the Fourteenth District of Texas, are attached hereto as Exhibits 1, 2, and 3, 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, 2, and 3, at the time of hearing of this cause.

6. Petitioner represents to the Board that the Judgment entered against Respondent, Paul Houston LaValle has now become final. Petitioner seeks the entry of a judgment of disbarment. Attached hereto is a true and correct copy of the form of the proposed judgment of which Petitioner seeks the entry herein.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays, upon notice to Respondent, that the Board enter its order disbarring Respondent and for such other and further relief to which Petitioner may be entitled.

Respectfully submitted,

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Chief Disciplinary Counsel

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ATTORNEYS FOR PETITIONER

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a trial on the merits of the Motion for Entry of Judgment of Disbarment heretofore sent to be filed with the Board of Disciplinary Appeals on this day, will be held in the courtroom of the Supreme Court of Texas, Tom C. Clark Building, 14th and Colorado Streets, Austin, Texas, at **9:00 a.m. on the 29th day of July, 2022**. The hearing location and format (in-person vs virtual) are subject to change based on conditions related to the COVID-19 pandemic. The Board of Disciplinary Appeals will notify the parties of any changes to the hearing location or format.

Judith Gres DeBerry

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been sent for personal service on this the 10th day of June, 2022, as follows:

Paul Houston LaValle
2106 Brook Haven Drive
League City, Texas 77573

Judith Gres DeBerry

September 2, 2021

JUDGMENT

The Fourteenth Court of Appeals

PAUL HOUSTON LAVALLE, Appellant

NO. 14-20-00245-CR V.

THE STATE OF TEXAS, Appellee

This cause was heard on the appellate record. Having considered the record, this Court holds that there was no error in the judgment. The Court orders the judgment **AFFIRMED**.

We further order this decision certified below for observance.

Judgment Rendered September 2, 2021.

Panel Consists of Chief Justice Christopher and Justices Wise and Hassan.
Memorandum Opinion delivered by Justice Hassan.

EXHIBIT
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Affirmed and Memorandum Opinion filed September 2, 2021.

In The

Fourteenth Court of Appeals

NO. 14-20-00245-CR

PAUL HOUSTON LAVALLE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 56th District Court
Galveston County, Texas
Trial Court Cause No. 19-CR-0918

MEMORANDUM OPINION

Appellant Paul Houston LaValle appeals his third degree felony conviction for tampering with or fabricating physical evidence. In two issues, he challenges the legal sufficiency of the evidence to support his conviction. We affirm.

BACKGROUND

Following an investigation regarding whether Appellant furnished alcohol to a minor at his house, he was charged in two counts with tampering with or

EXHIBIT
2

fabricating physical evidence on October 14, 2018. A four-day trial was held, at which the following evidence was elicited.

Sandy,[1] who was 17 years old in October 2018, testified how she met Appellant and about Appellant's relationship with her and her family. Although Appellant and her mother had been friends for a very long time, Sandy met Appellant when she was 12 or 13 years old. At the time, Sandy and her family lived in Colorado and Appellant, who is an attorney, represented her older sister in a criminal case. When Sandy was 14 years old, she, her mother, her older brother, and her younger sister moved from Colorado to Texas. They lived with Appellant at his house for about a year because they had nowhere else to go. After they moved out of Appellant's home, Sandy's mother started working for Appellant. Sandy and her family continued seeing Appellant "a lot" even after moving out because they "were really close with him and his daughter." Appellant continued helping Sandy and her family by buying food, clothing, and "stuff [they] needed."

Sandy testified that her mother let Appellant watch over Sandy and Sandy's younger sister for "a couple of days" while she was in jail. During Sandy's testimony, the State introduced a "Power of Attorney and Consent to Medical and School Authorities" that Sandy's mother signed on April 17, 2017, which provided in relevant part:

> Know all men by these presents, that we, [Sandy's mother], of Seabrook, Harris County, Texas, hereby make, constitute, and appoint PAUL H. LAVALLE of Kemah, Galveston County, Texas my true and lawful attorney in fact for me and in my name, place, and stead, and for my use and benefit:
>
> To exercise, do, or perform any act, right, power, duty, or obligation whatsoever that I now have or may acquire the legal right, power, or capacity to exercise, do, or perform in connection with,

[1] To protect their identity, we refer to minors using fictitious names.

> arising out of, or relating to my children; [Sandy], a girl, born on . . . 2001, and [Sandy's younger sister], a girl born on . . . 2005.
>
> My said attorney in fact is authorized to enroll my said children into school and to grant permission to allow participation in sports and any other extracurricular activities;
>
> To authorize medical treatment and hospitalization of my children.
>
> To do whatever, in the judgment of my attorney in fact, would be in the best interest of my children.
>
> The rights, powers, and authority of said attorney in fact to exercise any and all of the rights and powers herein granted shall commence and be in full force and effect on even date herewith, and such rights, powers, and authority shall remain in force and effect until such time as this power is revoked by revocation entered of record in the office of the County Clerk of Harris County, Texas.

Sandy testified that on occasion she drank alcohol at Appellant's home. Her mother gave her permission to drink alcohol a few times and other times, when her mother was not present, Appellant gave Sandy permission to drink. Sandy testified that she drank alcohol on about 20 occasions at Appellant's house.

At some point, Appellant and Sandy had a "falling out" and their friendship ended. Sandy testified that she stopped talking to Appellant "for a while when [her] mom stopped talking to him." Sandy and her family lost their home in 2018, and Sandy moved in with her friend Deborah and Deborah's mother. During that time, Sandy and her mother did not communicate all the time. Sandy testified she "was in a really low point" and reached out to Appellant. He took her shopping, bought her food, and "just h[u]ng out" with her and his eight-year-old daughter Heidi.

In September 2018, Sandy and Appellant watched a movie at his house and Appellant allowed her to drink alcohol that evening. He told Sandy she could

invite a friend, so Sandy posted a video of her drinking alcohol on Snapchat.[2] The video was played for the jury and showed several liquor bottles in Appellant's pantry as well as Sandy drinking from a red Solo plastic cup. The video was captioned, "Who's trying to pull up?" Sandy's mother saw the video and called the police. When police officers arrived at Appellant's home, they talked to Sandy alone. She lied to the officers that she had not been drinking because she was "scared of consequences" and did not want Appellant to get in trouble. She told the police that her mother was crazy, she did not live with her mother, and she did not know why her mother was bothering her. Although no one got in trouble that night, the officers took Sandy home.

A few weeks later on October 13, 2018, Appellant, Heidi, Sandy, and her 17-year-old friend Deborah went to Fun House in the afternoon.[3] They left Fun House around 5 p.m. to go to the store because Sandy told Appellant she needed a new phone. After leaving the phone store, they went to Appellant's house. Sandy testified that she and Deborah made drinks "right off the bat" within ten minutes of arriving at Appellant's house. Sandy testified that Appellant gave her permission to drink and told Sandy and Deborah to "pick whatever we wanted." Sandy stated that Appellant was in the kitchen when she poured alcoholic drinks for herself and Deborah. Once they started drinking, Appellant showed Sandy a young woman on his Tinder.[4] According to Sandy, Appellant said he invited the girl over and Sandy

[2] "Snapchat is a messaging application that allows users to share pictures, videos, and messages that are only available for a short time before they become inaccessible. 'Snaps' can be directed privately to selected contacts or to a semi-public 'story.'" *Igboji v. State*, 607 S.W.3d 157, 161 n.1 (Tex. App.—Houston [14th Dist.] 2020, pet. granted).

[3] Fun House is "an arcade place for kids." "It's just a fun place" with "games and food."

[4] "Tinder is an American geosocial networking and online dating application that allows users to anonymously swipe to like or dislike other users' posted profiles, which generally comprise their photo, a short bio, and a list of their personal interests. Once two users have "matched", they can exchange messages." *See* Tinder (app), Wikipedia,

and Deborah were supposed to babysit Heidi and help her with homework.

Sandy testified that Jill, the young woman Appellant had shown her on his Tinder, arrived at the house. To Sandy, she appeared to be in her early twenties. Sandy did not talk to Jill except to introduce herself. At some point, Sandy observed Appellant make Jill a drink "but then they left right after." According to Sandy, Appellant told her that he and Jill "were leaving to go to work or go to the office." Sandy and Deborah stayed with Heidi and helped Heidi with her homework. Later, Detective Alonzo Soza from the Kemah Police Department arrived at Appellant's house to conduct a welfare check. Sandy and Deborah were not arrested that night, but Deborah's mother picked them up and took them home.

Sandy testified that Appellant called her later that same evening to check on her. She testified that Appellant told her he would bring a paper for her to sign "just so he didn't lose his kid." She "felt really bad" and "just wanted to help him by doing what he asked [her] to." She stated she trusted Appellant and he assured her that signing the paper would not get her in trouble. Sandy testified that Appellant's paralegal, Mischa Montgomery, came to Deborah's house with an affidavit for Sandy to sign. Sandy claimed she did not read the affidavit, Montgomery just gave her a pen, Sandy signed the affidavit, and Montgomery left. The affidavit Sandy signed was introduced at trial and provided in relevant part:

> BEFORE ME, the undersigned authority, on this day personally appeared [Sandy], who, being by me duly sworn, stated:
>
> I, [Sandy], am 17 years of age, and am of sound mind and I am capable of making this affidavit.
>
> While I am not 18, I know the difference between right and wrong, the truth and a lie.
>
> On October 13, 2018, I asked to babysit Mr. LaValle's child at

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https://en.wikipedia.org/wiki/Tinder_(app) (last visited August 2, 2021).

> his home in Kemah, Galveston County, Texas. After he left the residence[,] I stupidly made alcoholic drinks for myself and my friend.
>
> I was caught by the Kemah Police. I was told by the police that they knew I had been drinking and that I would go to jail if I did not admit that Mr. LaValle was serving me drinks. I lied and told the police that is what happened.
>
> The truth of the matter is that Mr. LaValle is a very strict person and parent and would never allow me or anyone to drink underage, smoke, do drugs, or break any sort of laws.
>
> I understand that by admitting now that I lied to the police, I may be in more trouble today than I was yesterday, but I was scared and I was not trying to hurt anyone.
>
> I swear and affirm that the foregoing is true and correct to the best of my knowledge and belief.

Sandy testified that she did not make any of the statements in the affidavit and that most of the statements were false. She explained why the statements were false: (1) Sandy did not ask Appellant to babysit Heidi, but Appellant asked Sandy to babysit; (2) Sandy did not make drinks for her and Deborah after Appellant left the house – instead, she made the drinks while Appellant was home in his kitchen, and he saw her pour the drinks; (3) the police did not tell Sandy that she would go to jail if she did not admit Appellant served her drinks; (4) Sandy did not lie when she spoke to the police; and (5) except with regards to his daughter, Appellant is not a strict person who would not allow her to drink underage because he allowed her to "drink on multiple occasions."

Sandy stated that a day or two after signing the affidavit she received a phone call from Detective Soza. She "found out" the affidavit she signed had been submitted to the police and that she "was going to be in trouble for lying to the police." Sandy went to the police with her mother, and Detective Soza showed and read the affidavit to them. Sandy told Detective Soza "[t]hat's clearly not how I

write or talk and I didn't know any of that was said on the paper or I wouldn't have signed it." Sandy testified that 90% of the affidavit was untrue.

Deborah also testified at trial and confirmed much of what occurred on October 13 and 14, 2018, although her testimony differed regarding some details. She testified that Sandy had told her that they could earn money babysitting Appellant's daughter, so Deborah and Sandy drove to Appellant's home where Deborah met Appellant for the first time. When they arrived, Appellant took them and his daughter to play games at Fun House. Later that night, they all stopped at a phone store before returning to Appellant's house. Shortly after arriving at the house, Appellant offered Deborah and Sandy alcohol. Deborah could not "completely remember" whether Appellant or Sandy poured alcoholic drinks for her and Sandy, but she believed that Appellant poured the drinks. Deborah testified that she started watching television while Appellant and Sandy looked at his Tinder.

Thereafter, Jill arrived at Appellant's home; she was one of the young women Appellant was looking at on Tinder. Appellant and Jill talked for 30 to 60 minutes. At some point, Appellant also poured Jill an alcoholic drink. When Appellant and Jill left the house, Deborah and Sandy helped Heidi with her homework and babysat. Approximately 45 minutes later, the police arrived at Appellant's home. Then, Deborah's mother arrived and took Deborah and Sandy home. The next day, Sandy and Appellant talked on the phone. Later that day, a woman came to Deborah's house and talked to Sandy for "a couple of minutes," but Deborah could not hear what they were talking about or see what they were doing.

The State also presented Jill's testimony at trial. She stated that she was 19 years old when she met Appellant through Tinder, although she listed her age as

being 20 years old. Jill and Appellant first texted each other before meeting in person at his home on October 13, 2018. She testified that she went to his home to sign paperwork because Appellant was supposed to represent her at a criminal hearing the next day. She testified that Appellant, "his daughter, the two girls [Deborah and Sandy] . . . and his paralegal were at the house." Jill stated she did not stay very long at Appellant's house—"[p]robably a couple of hours" to do paperwork. While she was there, Appellant made her one alcoholic drink, but she did not see Sandy and Deborah drinking. When Appellant and Jill left the house, they went to eat at a restaurant and also went to Appellant's office.

The next day, Appellant called Jill and asked her if she could sign an affidavit for him. She agreed and went to Appellant's house. Appellant, Montgomery, and another person were at the house when she arrived. Jill talked to Appellant "[j]ust in general about what was going on." She read the affidavit and then signed it. The affidavit was introduced at trial and provided in relevant part:

> BEFORE ME, the undersigned authority, on this day personally appeared [Jill], who, being by me duly sworn, stated:
>
> I, [Jill], am over the age of 18 years, and am of sound mind and I am capable of making this affidavit. My cell phone number is . . . .
>
> On the afternoon and evening of Saturday, October 13, 2018, I was at the residence of Mr. Paul LaValle . . . .
>
> Also at the residence was Mr. LaValle, his daughter, [Heidi], a 17 year-old named [Sandy] and her 17 year-old friend/roommate named [Deborah].
>
> I was there for several hours assisting Mr. LaValle with some contract work [sic] his business. During this time, I never left his side and never saw him serve alcoholic beverages to anyone, nor did I see the two teenage girls drinking alcohol or under the influence of alcohol.
>
> Mr. LaValle and I were required to travel to his office for 1.5-2 hours to finish our work project.

> I heard him tell his child that she would be coming with us and the other girls would be going home. However, the child wanted to stay home and the teenagers offered to babysit.
>
> We left the residence and were extremely disturbed when we returned home and found out what the teenage girls had done.
>
> I swear and affirm that the foregoing is true and correct to the best of my knowledge and belief.

Jill testified that most of the statements in the affidavit were true. She testified the statement that she never saw Appellant serve alcoholic beverages to anyone was untrue because he served her alcohol. Although she acknowledged the statement was untrue, she also stated that she thought at the time she signed the affidavit that the statement did not relate to her but that it related to Sandy and Deborah because "that's who the police were investigating."

The jury also heard from Montgomery, who testified that Appellant called her in the early afternoon on October 14, 2018, and asked her to come to his house. When she arrived, Appellant asked her to draft affidavits for Sandy and Jill. Montgomery drafted the two affidavits based on information Appellant provided to her. Within an hour, Jill came to Appellant's house; Jill "actually read" and signed the affidavit, Jill provided her identification to Montgomery, and Montgomery notarized the affidavit. That same evening, Montgomery went to Deborah's house to have Sandy sign the affidavit. Montgomery testified that Sandy answered the door. Montgomery testified that she asked Sandy to read the affidavit "and asked her if everything was the facts as stated in the affidavit to her knowledge. [Sandy] said yes and she went ahead and signed it and [Montgomery] notarized it."

Finally, the State presented testimony from Detective Soza who went to Appellant's home after he received a welfare concern call regarding the "October 13th incident." Although it appears that Detective Soza agreed (during the State's questioning) that he received the service call to conduct a welfare check at

Appellant's house in the evening of October 14, 2018, it is evident from the record as a whole that Detective Soza went to Appellant's house to respond to a welfare concern the evening of October 13, 2018. After the service call, Detective Soza started investigating whether the offense of furnishing alcohol to a minor had been committed with regard to Sandy and Deborah at Appellant's house. Detective Soza testified he considered Jill to be a witness and Appellant to be "the subject or the suspect" in his pending investigation. Detective Soza called Appellant and left him messages to inform him that he was being investigated for a potential charge of furnishing alcohol to a minor. When Detective Soza first spoke to Appellant, Appellant asked him if he had received a package from Appellant's attorney. At that point, Detective Soza had not received anything; but later, he received affidavits signed by Sandy and Jill.

Detective Soza testified that affidavits like the ones from Sandy and Jill are important to his investigation regarding whether the offense of furnishing alcohol to a minor had been committed because they can affect the outcome of the investigation. He explained that such affidavits "could cease the investigation," "could take time away of the entire investigation as a whole or steer it in a complete[ly] different direction." He stated that it is uncommon to receive "affidavits from the actual suspect of the investigation." When Detective Soza spoke to Sandy and Jill about their affidavits, he "was told by both parties that there was [sic] items listed in those affidavits that were not true." He explained that because the affidavits were signed and notarized, he considered them "to be full and legal documents" and his investigation shifted into a new direction. He explained that when he is "presented with records in a pending criminal investigation that contain[] statements in them that are not true or that [he] believe[s] to not be true," that "would be considered tampering."

After Detective Soza received the affidavits, he scheduled an in-person interview with Appellant and his attorney. Appellant came to the Kemah Police Department with his attorney and spoke with Detective Soza. According to Detective Soza, Appellant stated he prepared the two affidavits based on statements Sandy and Jill made to him. With regard to Jill, Detective Soza testified that Appellant "mentioned that she was upset because she was no longer going to receive or she was under the impression she was going to receive free legal representation with a current case that she had pending in another county." And regarding Sandy, Appellant's "explanations were in brief that Sandy didn't want to get in trouble and so she made these statements to him and this is how he prepared the affidavits and that there was mention of alcohol being thrown away so that way she would not be getting in trouble for having the alcohol." Appellant "denied giving alcohol to anyone." Detective Soza's investigation also revealed that Kemah police had been dispatched to Appellant's house about a month earlier for a welfare check involving alcohol consumption by Sandy.

After hearing the evidence presented by the parties, the jury found Appellant guilty as charged in both counts. The trial court placed Appellant on community supervision for five years on both counts. Appellant filed a timely notice of appeal.

ANALYSIS

In two issues, Appellant challenges the legal sufficiency of the evidence to support his conviction for tampering with or fabricating physical evidence.

I. Standard of Review and Governing Law

Evidence is sufficient to support a criminal conviction if a rational jury could find each essential element of the offense beyond a reasonable doubt.

Jackson v. Virginia, 443 U.S. 307, 319 (1979); *Stahmann v. State*, 602 S.W.3d 573, 577 (Tex. Crim. App. 2020). We view the evidence in the light most favorable to the verdict and consider all of the admitted evidence, regardless of whether it was properly admitted. *Stahmann*, 602 S.W.3d at 577. The jury is the sole judge of credibility and weight to be attached to the testimony of the witnesses. *Id*. The jury may choose to believe or disbelieve all or part of a witness's testimony, and we presume the jury resolved any conflicts in the evidence in favor of the prevailing party. *Thomas v. State*, 444 S.W.3d 4, 8, 10 (Tex. Crim. App. 2014); *Green v. State*, 607 S.W.3d 147, 152 (Tex. App.—Houston [14th Dist.] 2020, no pet.). Juries can draw reasonable inferences from the evidence so long as each inference is supported by the evidence produced at trial. *Stahmann*, 602 S.W.3d at 577. "Each fact need not point directly and independently to the appellant's guilt so long as the cumulative effect of all incriminating facts is sufficient to support the conviction." *Davis v. State*, 586 S.W.3d 586, 589 (Tex. App.—Houston [14th Dist.] 2019, pet. ref'd).

As applicable in this case, a person commits the third degree felony offense of tampering with or fabricating physical evidence if, (1) knowing that an investigation is in progress; (2) he makes, presents, or uses a thing with knowledge of its falsity; and (3) acts with the intent to affect the course or outcome of the investigation. *See* Tex. Penal Code Ann. § 37.09(a)(2); *Wilson v. State*, 311 S.W.3d 452, 464 (Tex. Crim. App. 2010). The purpose of section 37.09 "is to maintain the honesty, integrity, and reliability of the justice system" and to prohibit anyone from "creating, destroying, forging, altering or otherwise tampering with evidence that may be used in an official investigation or judicial proceeding." *Wilson*, 311 S.W.3d at 458 (citations omitted).

II. Tampering with or Fabricating Physical Evidence Count I

In his first issue, Appellant argues the evidence is legally insufficient to support his conviction under count I of the indictment[5] because the unrevoked power of attorney Sandy's mother signed in 2017 gave him the right to act *in loco parentis* and serve Sandy alcohol, so that Appellant's conduct of furnishing Sandy alcohol was not a crime and he could not have known that an investigation was pending. In that regard, Appellant argues that "[b]ecause it is a defense to a prosecution for furnishing alcohol to a minor if, *inter alia*, the alcohol is furnished by the minor's parent or guardian, the unrevoked power of attorney continued to vest Appellant with the authority to give Sandy permission to consume alcohol acting in his capacity 'in loco parentis.'" Quoting *Brosky v. State*, 915 S.W.2d 120, 144 (Tex. App.—Fort Worth 1996, pet. ref'd), Appellant claims that "because Appellant could not have been guilty of furnishing alcohol to Sandy, 'for a person's actions to fall within the confines of section 37.09, a separate criminal offense must *already* have been committed; otherwise [Appellant] could not kn[ow] that an investigation . . . is pending.'"

We reject Appellant's contention that the evidence is legally insufficient to establish the element that Appellant had knowledge an investigation was pending or in progress because, without having committed the offense of furnishing alcohol to Sandy, he could not have had knowledge of an investigation that was pending or in progress. We also find that Appellant misplaces his reliance on *Brosky* to support his contention.

[5] Count I states in pertinent part that Appellant, on or about October 14, 2018, "did then and there, knowing that an investigation was in progress, namely furnishing alcohol to a minor intentionally and knowingly make and/or present a document, namely the affidavit of [Sandy], with knowledge of its falsity and with intent to affect the course or outcome of the furnishing alcohol to a minor investigation."

In *Brosky*, the defendant appealed his conviction for engaging in organized criminal activity pursuant to section 71.02 of the Texas Penal Code, arguing "the trial court erred in refusing to instruct the jury on the lesser-included offense of tampering with evidence, a violation of section 37.09 of the Texas Penal Code." In rejecting the defendant's argument, the court of appeals stated:

> Brosky has not provided, nor can we find, any authority for the proposition that the lesser offense of tampering with evidence is included within the proof necessary to establish the offense of engaging in organized criminal activity. Section 71.02 requires that an actor not only agree to participate, but must also perform some overt act in pursuance of an agreement to commit a separate criminal offense. The additional criminal offense, such as murder, need not ever actually take place but instead must be planned. Conversely, it appears to this court that for a person's actions to fall within the confines of section 37.09, a separate criminal offense must already have been committed; otherwise, the actor could not "kn[ow] that an investigation . . . is pending." We reject the argument that conduct that is necessarily conducted after a crime has been committed is a lesser-included offense of engaging in organized criminal activity. We do not find, then, that proof of a violation of section 37.09 is established by proof of the same or less than all the facts required to establish the commission of section 71.02.

Id. at 143-44 (internal citations omitted).

The *Brosky* court does not provide analysis for its statement that "it appears to this court that for a person's actions to fall within the confines of section 37.09, a separate criminal offense must already have been committed; otherwise, the actor could not 'kn[ow] that an investigation . . . is pending.'" Additionally, we do not find the *Brosky* court's broad statement persuasive. No language in the statute supports a conclusion that for a defendant's actions to fall within the purview of section 37.09, the evidence must show a separate criminal offense had already been committed because, otherwise, the defendant could not have known that an investigation was pending or in progress.

The first element in section 37.09(a)(2) requires a person to know that an investigation or official proceeding is pending or in progress. There is no language adding an additional requirement that "a separate criminal offense must already have been committed" to establish the knowledge element. If the legislature had intended that the investigation or official proceeding must relate to an already committed criminal offense, it would have stated so just as it did in section 37.09(d)(1) for example. *See Stahmann*, 602 S.W.3d at 579 ("If the legislature intended for the mere movement of a physical thing to constitute tampering, it could have said that."). That section specifically provides that a person commits an offense if the person "*knowing that an offense has been committed*, alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in any subsequent investigation of or official proceeding related to the offense." Tex. Pen. Code Ann. § 37.09(d)(1) (emphasis added). We see no support for Appellant's contention in the statutory language.

Further, although no court has expressly addressed Appellant's argument raised here, several courts have affirmed defendants' convictions under section 37.09(a)(2) without evidence that a separate criminal offense had already been committed to establish the defendants' knowledge that an investigation was pending or in progress. *See Waldrop v. State*, 219 S.W.3d 531, 533-38 (Tex. App.—Texarkana 2007, no pet.) (defendant fabricated evidence with the intent to affect the outcome of an investigation into alleged sexual abuse based on defendant's false report of the abuse; defendant, with knowledge of the pending investigation, produced and presented to the police a recording of her daughters' coached, false accounts of the alleged abuse; court of appeals affirmed defendant's conviction under section 37.09(a)(2) even though no separate criminal offense had already been committed); *Waldrop v. State*, No. 06-06-00074-CR, 2007 WL

845011, at *1-4 (Tex. App.—Texarkana Mar. 22, 2007, no pet.) (mem. op., not designated for publication) (same); *Arriaga v. State*, 2 S.W.3d 508, 508-512 (Tex. App.—San Antonio 1999, pet. ref'd) (defendant police officer, who investigated a two-car accident, "did intentionally and knowingly make a false police report by falsely writing [a different person's] name as the driver of vehicle number two," with the intent to affect the outcome of a traffic accident investigation; court of appeals affirmed conviction of defendant police officer under section 37.09(a)(2) even though no separate criminal offense had already been committed and the investigation involved a simple traffic accident); *see also Garza v. State*, No. 02-14-00206-CR, 2015 WL 3422467, at *1-8 (Tex. App.—Fort Worth May 28, 2015, pet. ref'd) (mem. op., not designated for publication) (defendant was indicted for tampering with or fabricating evidence pursuant to section 37.09(a)(2) after he submitted two false affidavits in support of his application for post-conviction habeas relief; court of appeals affirmed conviction concluding there was sufficient evidence that defendant made, presented, or used the affidavits with knowledge of their falsity and with the intent to affect the course or outcome of the official proceeding relating to his application for post-conviction habeas relief; there was no separate criminal offense already committed relating to the official proceeding).

Having rejected Appellant's contention that the evidence is legally insufficient to establish Appellant's knowledge that an investigation was pending because, without having committed the offense of furnishing alcohol to Sandy, he could not have had knowledge of a pending investigation, we overrule Appellant's first issue.

III. Tampering with or Fabricating Physical Evidence Count II

In his second issue, Appellant asserts there is legally insufficient evidence to support his conviction under count II of the indictment because Detective Soza was

not investigating whether Appellant furnished alcohol to Jill at the time Appellant provided Jill's affidavit to Detective Soza and, therefore, "no rational juror could have found beyond a reasonable doubt that Appellant had the conscious desire or objective to affect the course or outcome of an investigation that was not yet in progress or had even been initiated." In that regard, Appellant contends that "the gravamen of an offense under sec. 37.09(a)(2) required Appellant, *inter alia*, to have" (1) "known that an investigation was in progress regarding his allegedly having furnished alcohol to a minor, namely, [Jill];" and (2) "had the intent to affect the course or outcome of that investigation." Appellant claims the jury could not have "found either element was proven beyond a reasonable doubt *when no such investigation was in progress* when Appellant presented [Jill]'s affidavit." (Emphasis in original).

We reject Appellant's argument. The indictment for count II provided in pertinent part that Appellant, on or about October 14, 2018, "did then and there, knowing that an investigation was in progress, namely furnishing alcohol to *a minor*[,] intentionally and knowingly make and/or present a document, namely the affidavit of [Jill], with knowledge of its falsity and with intent to affect the course or outcome of the furnishing alcohol to *a minor* investigation." (Emphasis added).

Contrary to Appellant's assertion, the State did not charge Appellant with knowledge that an investigation was in progress regarding whether he furnished alcohol to Jill. Nor did the State in the indictment allege that Appellant acted with intent to affect the course or outcome of an investigation regarding whether he furnished alcohol to Jill. In fact, the indictment did not specify Jill or any particular minor as the subject of Detective Soza's investigation. Therefore, the State was not required to prove that Appellant (1) knew that an investigation was in progress relating to him furnishing alcohol to Jill, and (2) intended to affect the

course or outcome of an investigation regarding Jill. Instead, the State under count II had to prove that Appellant (1) "knowing that an investigation was in progress, namely furnishing alcohol to *a minor*"; (2) intentionally and knowingly made and/or presented Jill's affidavit with knowledge of its falsity; and (3) with "intent to affect the course or outcome of the furnishing alcohol to *a minor* investigation." (Emphasis added).

Further, the focus at trial was not on whether Appellant furnished alcohol to Jill but whether he furnished alcohol to Sandy and Deborah. Detective Soza made clear that his investigation into whether Appellant furnished alcohol to a minor involved two specific minors: Sandy and Deborah. Detective Soza testified so several times. He did not consider Jill to be a victim; rather, he considered her to be a witness in his investigation into whether Sandy and Deborah were furnished alcohol by Appellant. Considering the affidavit Appellant asked Jill to sign, he also considered Jill to only be a witness (and not a victim) in Detective Soza's investigation, or he would not have ensured that one of the statements specifically provided that Jill did not "see the two teenage girls drinking alcohol" — clearly referring to Sandy and Deborah. Additionally, the State highlighted in its closing argument that Detective Soza considered Jill to be a witness and that he investigated whether Appellant furnished alcohol to Sandy and Deborah.

Moreover, based on the record before us, there is legally sufficient evidence that the State proved the offense alleged in count II of the indictment. Appellant knew that he was being investigated for furnishing alcohol to a minor, namely Sandy and Deborah, when he made and/or presented Jill's affidavit to Detective Soza. Detective Soza testified that he had informed Appellant of the investigation. Sandy also had a phone conversation with Appellant on October 13, 2018, in which she informed him what had happened after he and Jill left his house that

evening. Appellant told Sandy during this phone call that "he was bringing by a paper for [her] to sign," indicating he knew about the investigation.

At a minimum, the jury could have concluded the statement in Jill's affidavit that she "never saw [Appellant] serve alcoholic beverages to anyone" was not only false but that Appellant knew it was false. Appellant served Jill, who was a minor at the time, an alcoholic beverage. Jill testified that Appellant made her a mixed drink containing vodka and orange juice. Both Deborah and Sandy testified that Appellant poured Jill an alcoholic drink. Thus, the statement that he did not serve alcohol to "anyone" is false. Also, Montgomery drafted Jill's affidavit based on information Appellant provided to her, and he knew the information was false because he was the one who poured Jill an alcoholic beverage.

The evidence further supports a finding that Appellant made and/or presented Jill's affidavit with intent to affect the course or outcome of Detective Soza's investigation into whether Appellant furnished alcohol to Sandy and Deborah on October 13, 2018. Jill was a witness and had no relation to Sandy and Deborah. The jury reasonably could have determined that Appellant made and/or presented Jill's affidavit to Detective Soza in order to corroborate the statements contained in Sandy's affidavit and to corroborate Appellant's denial that he never served alcohol to minors Sandy and Deborah.

Viewed in the light most favorable to the verdict, we conclude that the evidence is sufficient to establish that Appellant committed the offense of tampering with or fabricating physical evidence as alleged in count II of the indictment. Accordingly, we overrule Appellant's second issue.[6]

[6] In light of our disposition, we need not address Appellant's assertion that "[i]f this Court concludes that the evidence is legally insufficient to sustain Appellant's conviction as to merely one count but not both, he is entitled to a new punishment hearing on the remaining count."

CONCLUSION

We affirm the trial court's judgment.

/s/ Meagan Hassan
Justice

Panel consists of Chief Justice Christopher and Justices Wise and Hassan.
Do Not Publish — Tex. R. App. 47.2(b).

Fourteenth Court of Appeals

301 Fannin, Suite 245
Houston, Texas 77002

Thursday, December 16, 2021

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Criminal District Attorney of Galveston County, Texas
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* DELIVERED VIA E-MAIL *

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Galveston County, District Clerk, Criminal Division
District Clerk, Galveston County Criminal Division
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Galveston County Justice Center
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RE: Court of Appeals Number: 14-20-00245-CR
Trial Court Case Number: 19-CR-0918

Style: Paul Houston LaValle
v.
The State of Texas

Please be advised that on this date the mandate was issued in the above cause. You may obtain a copy of the Court's mandate and all related documents by visiting the Court's website at http://www.search.txcourts.gov/CaseSearch.aspx?coa=coa14. Pursuant to Texas Government Code, Sec. 51.204(b), exhibits on file with the court, **if any**, will be destroyed three years from this date. As required by the Texas Government Code, Sec. 51.204 (d)(e), we are also notifying the trial court clerk that we will destroy all records filed in respect to this case with the exception of indexes, original opinions, minutes and general court dockets, no earlier than six (6) years from the date of mandate in **all civil cases** and 25 years in **criminal cases with a sentence of 20 years or less**.

Sincerely,

/s/ Juliana Ramirez,
Deputy Clerk

EXHIBIT
3

MANDATE

The Fourteenth Court of Appeals

NO. 14-20-00245-CR

Paul Houston LaValle, Appellant

v.

The State of Texas, Appellee

Appealed from the 56th District Court of Galveston County. (Trial Court No. 19-CR-0918). Memorandum Opinion delivered by Justice Hassan. Chief Justice Christopher and Justice Wise also participating.

TO THE 56TH DISTRICT COURT OF GALVESTON COUNTY, GREETINGS:

Before our Court of Appeals on September 2, 2021, the cause upon appeal to revise or reverse your judgment was determined. Our Court of Appeals made its order in these words:

This cause was heard on the appellate record. Having considered the record, this Court holds that there was no error in the judgment. The Court orders the judgment **AFFIRMED**.

We further order this decision certified below for observance.

WHEREFORE, WE COMMAND YOU to observe the order of our said Court in this behalf and in all things have it duly recognized, obeyed, and executed.

WITNESS, the Hon. Tracy Christopher, Chief Justice of our Fourteenth Court of Appeals, with the Seal thereof affixed, at the City of Houston, Texas, December 16, 2021.

CHRISTOPHER A. PRINE, CLERK

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

IN THE MATTER OF	**§**	
PAUL HOUSTON LAVALLE,	**§**	**CAUSE NO. 64480**
STATE BAR CARD NO. 11998625	**§**	

JUDGMENT OF DISBARMENT

On the ____ day of _____, 2022, the Board of Disciplinary Appeals considered the Motion for Entry of Judgment of Disbarment filed in the above case by Petitioner, Commission for Lawyer Discipline of the State Bar of Texas, against Respondent, Paul Houston LaValle. The Board finds that:

(1) It has continuing jurisdiction of this matter pursuant to Texas Rules of Disciplinary Procedure 8.05 ("TRDP");

(2) The Court of Appeals for the Fourteenth District of Texas affirmed Respondent, Paul Houston LaValle's, conviction and sentence on or about December 16, 2021;

(3) Petitioner filed its Motion for Entry of Judgment of Disbarment on or about June 10, 2022, and served same on Respondent in accordance with TRDP 8.05;

(4) Respondent's conviction for the commission of an Intentional Crime as defined by TRDP 1.06(V) and for a Serious Crime as defined by TRDP 1.06(GG), for which he was sentenced in the 57th Judicial District Court of Galveston County, Texas, has become final and is not subject to appeal;

(5) Petitioner's Motion for Entry of Judgment of Disbarment should be granted.

Interlocutory Suspension

On May 17, 2021, the Board of Disciplinary Appeals entered an Agreed Interlocutory Order of Suspension, which included the following findings of fact and conclusions of law:

(1) Respondent, Paul Houston LaValle, whose State Bar Card number is 11998625, is licensed and authorized by the Supreme Court of Texas to practice law in the State of Texas.

(2) On or about March 21, 2019, Respondent was charged by Indictment with two counts in Cause No. 19CR0918, styled *The State of Texas v. Paul Houston LaValle*, in the 56th Judicial District Court of Galveston County, Texas:

> Count I: On or about October 14, 2018, Respondent "did then and there, knowing that an investigation was in progress, namely furnishing alcohol to a minor intentionally and knowingly make and/or present a document, namely the affidavit of Sara Carlin, with knowledge of its falsity and with intent to affect the course or outcome of the furnishing alcohol to a minor investigation;" and
>
> Count II: On or about October 14, 2018, Respondent "did then and there, knowing that an investigation was in progress, namely furnishing alcohol to a minor intentionally and knowingly make and/or present a document, namely the affidavit of Jailene Soliz, with knowledge of its falsity and with intent to affect the course or outcome of the furnishing alcohol to a minor investigation."

(3) On or about February 28, 2020, a Judgment of Conviction by Jury was entered in Cause No. 19CR0918, styled *The State of Texas v. Paul Houston LaValle*, in the 56th Judicial District Court of Galveston County, Texas, wherein Respondent was found guilty of Tampering with or Fabricating Physical Evidence and was sentenced to five (5) years in the Institutional Division of the Texas Department of Criminal Justice. The sentence of confinement was suspended and Respondent was placed on community supervision for five (5) years and ordered to pay court costs in the amount of $290 and reimbursement in the amount of $87.00.

(4) Respondent, Paul Houston LaValle, is the same person as the Paul Houston LaValle who is the subject of the criminal case described above.

(5) Respondent has appealed the criminal conviction. The appeal is pending before the Fourteenth Court of Appeals, Houston, Texas, in Case No. 14-20-00245-CR, styled *Paul Houston LaValle v. The State of Texas*.

(6) On May 12, 2021, Respondent filed a civil lawsuit in the United States District Court for the Southern District of Texas, Galveston Division, in Case No. 3:21-CV-106, styled *Paul Houston LaValle v. Seana Willing,* asserting claims relating to alleged harm resulting from this interlocutory compulsory discipline proceeding.

(7) Also on May 12, 2021, Respondent filed a document titled Notice of Removal, which asserted that the interlocutory compulsory discipline proceeding before the Board was stayed, as well as removed to federal court and joined with the case described above.

(8) On May 13, 2021, Petitioner filed a response to the Notice of Removal, articulating four bases for the Board to conclude that it was not divested of jurisdiction and asserting that the Board should proceed to consider and decide the interlocutory matter pending before the Board.

(9) At the hearing before the Board on May 13, 2021, Respondent was given an opportunity to address and respond to each of Petitioner's arguments as to removal; Respondent declined to do so.

(10) This Board has exclusive jurisdiction to hear and determine compulsory discipline matters, including petitions seeking interlocutory suspension pending disposition on appeal. TEX. R. DISCIPLINARY P. R. 7.08(G).

(11) Respondent's purported notice of removal did not divest the Board of jurisdiction to perform its duty under TEX. R. DISCIPLINARY P. R. 8.04.

(12) Respondent, Paul Houston LaValle, having been convicted of Tampering with or Fabricating Physical Evidence, has been convicted of an Intentional Crime as defined by TEX. R. DISCIPLINARY P. R. 1.06(V).

(13) Respondent has also been convicted of a Serious Crime as defined by TEX. R. DISCIPLINARY P. R. 1.06(GG).

(14) Having been convicted of Intentional and Serious Crime and having appealed such conviction, Respondent, Paul Houston LaValle, should have his license to practice law in Texas suspended during the appeal of his criminal conviction. TRDP 8.04.

(15) The Board retains jurisdiction to enter a final judgment in this matter when the criminal appeal is final. TEX. R. DISCIPLINARY P. R. 8.04-.06.

Disbarment

The Board has determined that disbarment of Respondent is appropriate. It is, therefore, accordingly, **ORDERED, ADJUDGED**, and **DECREED** that Respondent, Paul Houston LaValle, State Bar No. 11998625, be and he is hereby DISBARRED from the practice of law in the State of Texas, and his license to practice law in this state be and is hereby revoked.

It is further **ORDERED, ADJUDGED** and **DECREED** that Respondent, Paul Houston LaValle, is hereafter prohibited, effective immediately, from practicing law in Texas, holding himself out as an attorney at law, performing any legal service for others, accepting any fee directly

or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any Texas administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words "attorney," "counselor," or "lawyer."

It is further **ORDERED** Respondent, Paul Houston LaValle, shall immediately notify each of his current clients in writing of this disbarment. In addition to such notification, Respondent is **ORDERED** to return any files, papers, unearned monies and other property belonging to clients and former clients in the Respondent's possession to the respective clients or former clients or to another attorney at the client's or former client's request. Respondent is further **ORDERED** to file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Board, an affidavit stating that all current clients have been notified of Respondent's disbarment and that all files, papers, monies and other property belonging to all clients and former clients have been returned as ordered herein.

It is further **ORDERED** Respondent, Paul Houston LaValle, shall, on or before thirty (30) days from the signing of this judgment by the Board, notify in writing each and every justice of the peace, judge, magistrate, administrative judge or officer and chief justice of each and every court or tribunal in which Respondent has any matter pending of the terms of this judgment, the style and cause number of the pending matter(s), and the name, address and telephone number of the client(s) Respondent is representing. Respondent is further **ORDERED** to file with the State Bar of Texas, Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, TX 78711-2487 (1414 Colorado St., Austin, TX 78701) within thirty (30) days of the signing of this judgment by the Board, an affidavit stating that each and every justice of the peace, judge, magistrate,

administrative judge or officer and chief justice has received written notice of the terms of this judgment.

It is further **ORDERED** that Respondent, Paul Houston LaValle, if he has not already done so, immediately surrender his Texas law license and permanent State Bar Card to the Office of the Chief Disciplinary Counsel, Statewide Compliance Monitor, State Bar of Texas, P. O. Box 12487, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas.

It is further **ORDERED** that a certified copy of the Second Amended Petition for Compulsory Discipline on file herein along with a copy of this Final Judgment of Disbarment be sent to the Chief Disciplinary Counsel of the State Bar of Texas, P.O. Box 12487, Austin, Texas 78711.

Signed this _____ day of _____ 2022.

_____
CHAIR PRESIDING

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

Contents

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 himor 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[1]) 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.

[1] 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.