



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

THE BOARD of DISCIPLINARY APPEALS
Appointed by the Supreme Court of Texas

IN THE MATTER OF §
SHASTA MARIE NOLTE, § CAUSE NO. 65078
STATE BAR CARD NO. 24071455 §

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline, (hereinafter called "Petitioner"), brings this action against Respondent, Shasta Marie Nolte, (hereinafter called "Respondent"), showing as follows:

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

2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Shasta Marie Nolte, 1865 N. Forest, Mesa, Arizona 85203-2826.

3. On or about August 4, 2020, an Agreement for Discipline by Consent (Exhibit 1) was entered by the State Bar of Arizona in a case styled: *In the Matter of a Member of the State Bar of Arizona, Shasta Marie Nolte, Bar No. 030368*, in Case No. PDJ 2020 9064, State Bar File No. 19-0705, which states in pertinent part:

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits that

she violated Rule 42, Ariz. R. Sup. Ct., specifically ER 1.2, ER 1.3, ER 1.4, ER 1.5(b), ER 3.1, ER 5.1, and ER 8.4(d).

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Reprimand with Probation for two (2) years, the terms of probation which will consist of:

1. LOMAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order.

Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.

2. CLE: In addition to annual MCLE requirements, Respondent shall complete three (3) hours of Continuing Legal Education ("CLE") program(s) regarding fee agreements, to be approved by Bar Counsel, during the term of probation. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes and certificate of completion. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

Respondent shall commit no further violations of the Rules of Professional Conduct.

4. On or about August 10, 2020, a Final Judgment and Order was entered by the State Bar of Arizona in a case styled: *In the Matter of a Member of the State Bar of Arizona, Shasta Marie Nolte, Bar No. 030368*, in Case No. PDJ 2020 9064, State Bar File No. 19-0705, which states in pertinent part:

IT IS ORDERED Respondent, SHASTA MARIE NOLTE, Bar No. 030368, is reprimanded for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED Respondent is placed on probation for a period of two (2) years. The terms of probation are:

- a) Law Office Member Assistance Program (LOMAP): Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of this Order. Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent shall be responsible for any costs associated with LOMAP.
- b) Continuing Legal Education (CLE): In addition to annual MCLE requirements, Respondent shall complete three (3) hours of Continuing Legal Education ("CLE") program(s) regarding fee agreements within the term of probation. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes and certificate of completion. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent shall be responsible for the cost of the CLE.

Respondent shall commit no further violations of the Rules of Professional Conduct.

IT IS FURTHER ORDERED Respondent shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00, within thirty (30) days from the date of this Order. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

5. In the Agreement for Discipline by Consent, Respondent conditionally admitted violating the following Arizona Rules of Professional Conduct while employed with her former law firm and in connection with her representation of a client in a name change and child custody/visitation matter:

ER 1.2 Scope of Representation and Allocation of Authority between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by ER 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

ER 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

ER 1.4 Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in ER 1.0(e), is required by these Rules;

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

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

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

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

(c) In a criminal case, a lawyer shall promptly inform a client of all proffered plea agreements.

ER 1.5(b) Fees

The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing before the fees or expenses to be billed at higher rates are actually incurred. The requirements of this subsection shall not apply to:

(1) court-appointed lawyers who are paid by a court or other governmental entity, and

(2) lawyers who provide pro bono short-term limited legal services to a client pursuant to ER 6.5.

ER 3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a good faith basis in law and fact for doing so that is not frivolous, which may include a good faith and nonfrivolous argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

ER 5.1 Law Firms and Associations

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

ER 8.4(d) Misconduct

It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

6. Copies of the Agreement for Discipline by Consent and Final Judgment and Order entered by the State Bar of Arizona in a case styled: *In the Matter of a Member of the State Bar of Arizona, Shasta Marie Nolte, Bar No. 030368*, in Case No. PDJ 2020 9064, State Bar File No. 19-0705, are attached hereto as Petitioner's Exhibits 1 and 2 and are made a part hereof for all intents and purposes as if the same was copied verbatim herein. Petitioner expects to introduce certified copies of Exhibit 1 and 2 at the time of hearing of this cause.
7. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an

order directing Respondent to show cause within thirty (30) days from the date of the mailing of the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enters a judgment imposing discipline identical with that imposed by the State Bar of Arizona and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

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Amanda M. Kates
Bar Card No. 24075987

ATTORNEYS FOR PETITIONER

FILED

8/4/2020

/s/ BRANDI ENSTON

The foregoing instrument is a full, true, and correct copy of the original on file in this office.
Certified this 4th day of August, 2020
By [Signature]
Disciplinary Clerk
Supreme Court of Arizona

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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

**SHASTA MARIE NOLTE,
Bar No. 030368,**

Respondent.

PDJ 2020 9064

State Bar File No. **19-0705**

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, and Respondent Shasta Marie Nolte who is represented in this matter by counsel, James E Padish, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on July 2, 2020, but no formal complaint has been

filed in this matter. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant by email on August 3, 2020. Complainant has been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. Copies of Complainant's objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that her conduct, as set forth below, violated Rule 42, ER 1.2, ER 1.3, ER 1.4, 1.5(b), ER 3.1, ER 5.1, ER 8.4(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **Reprimand with Probation** terms of which are set in Sanctions below. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order. If costs are not

paid within the 30 days interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on July 23, 2013.

COUNT ONE (File no. 19-0705/ Boca)

(Moonlighting Issues)

2. Respondent worked at Cantor Law for a few months from August – December of 2017. Respondent currently works for Bellah Perez, which she joined a few weeks after leaving Cantor.

3. After Respondent departed Cantor, the firm learned through reviewing Respondent's computer and email records that while Respondent was employed at Cantor, she had represented at least 5 clients outside of Cantor, in violation of Cantor's strict prohibition on moonlighting.

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

4. Because (1) Respondent never ran conflict checks in the Cantor system for the clients for whom she was moonlighting, and (2) in order to comply with the firm's malpractice insurance requirements, Cantor required Respondent to provide a sworn affidavit confirming the totality of the matters she handled outside of Cantor, including avowing that they were pro bono and she received no fees, and indemnifying Cantor in the event that any issues arose. Respondent provided a sworn affidavit to that effect on January 16, 2018.

5. Respondent, if called to testify, would state that she informed Cantor of the names of the outside family law matters she was handling while at Goldberg & Osborn at her job interviews, and put all of the outside family law matters she continued to handle while at Cantor on her calendar, and she believed they were therefore known to management and/or her paralegal.

6. Respondent had previously worked at Goldberg & Osborn (G&O). G&O is solely a personal injury firm, and they have a strict no moonlighting provision in the employment agreement that Respondent signed when she joined the firm in November of 2016. After Respondent departed G&O in 2017, its managing partner learned through a search of her emails that Respondent had been representing clients in family law matters outside of G&O without informing anyone at G&O or

running the clients through the conflict check system. The emails revealed also that Respondent had been assisting People's Choice Law Group, a Texas firm, by providing initial consultations for the firm while working at G&O, and never ran People's Choice Law Group's clients through G&O's conflicts either.

7. Respondent was required to execute an indemnification agreement to attest that she had represented the clients pro bono and did not accept any fees for work done outside of G&O, which Respondent did. Although Respondent admitted she was paid by some of the clients, she asserted the payments were for clients who were on a payment plan for work completed prior to Respondent's employment at G&O, and Respondent's records confirm this.

8. If called to testify, Respondent would say she alerted G&O to her outside family law clients prior to accepting employment and was told they did not have to be put through the conflict check system because they were not personal injury cases. Additionally, Respondent put hearings in the outside matters on her G&O calendar, and she believes that because G&O monitors all employees' computers, they knew about these clients.

(Representation of NV)

9. NV became a client of Cantor on January 23, 2019, and told Cantor that she was previously represented by Respondent in a family law custody/visitation matter, and a name-change matter. When the firm requested NV's family law file from Respondent, Respondent only provided parts of it, and made statements that caused concern. Additionally, NV expressed concerns about Respondent's representation.

10. In a January 29, 2019 email response to the request for NV's file in the custody/visitation matter, Respondent said she would mail certain hard copies shortly, she provided certain documents as pdfs, and she said that she had represented NV pro bono.

11. Respondent was also asked to provide NV's file in the name-change matter. Respondent answered that she had already mailed it to NV, but could also provide copies of what she had electronically. Respondent was asked for all attorney notes, fee agreements, and communications with NV.

12. Respondent responded via email on February 1, 2019, and said, "In regards to the pro-bono agreement it was a handshake between me and your client. There was never a written agreement, in regards to the request for \$204.00 filing fee, I let your client know the amount of the filing fee and gave her the court receipt at

the enforcement hearing...In regards to text messages, I don't have any text messages between me and your client. The text messages were more of communication as friends and did not contain any attorney/client information. Anything regarding the case I would have your client email me, such as the disclosure documents. Because I don't want my phone overloaded with text messages, I deleted the message chains."

13. In response to the State Bar's screening investigation, Respondent initially asserted that when she and NV met to discuss potential representation, NV presented herself as a financially struggling single mother. They discussed what representation would cost via Bellah Perez, or whether Respondent would be able to help outside of Bellah Perez pro bono. NV texted Respondent a few days later regarding the name-change matter. Respondent claims that she agreed to represent NV pro bono, and communicated the terms of representation via text message. Respondent asserts that she cannot produce the texts with NV that reflect the terms of pro bono representation because her cell phone malfunctioned in October of 2018, and the messages were lost.

14. In her initial response to the Bar's screening letter Respondent was "adamant that she charged the client nothing, even if a fee was paid (and none was),

the client makes no complaint.” “Neither [NV] nor [Complainant] provided any corroborating evidence, like copies of checks...from the client to substantiate this claim...If the client really said this, her veracity is questionable...Here is the truth: [Respondent] did not take a fee from the client.”

15. Respondent said that NV did not formally engage her in the custody/visitation matter until December of 2018. NV had been asking Respondent via phone and text for advice about how to help herself at the upcoming visitation enforcement hearing. Respondent claims that she finally agreed to represent NV pro bono because NV could not afford counsel.

16. Respondent claims that because NV was “essentially indigent” Respondent paid the filing fee on her behalf using “personal funds.” Respondent says she prepared NV for a December 12, 2018 hearing via telephone conference on December 11, and then represented her at the hearing.

17. NV says that on November 30, 2018, Respondent confirmed “in person” that she would represent her in the custody matter and respond to Father’s filing in a few days. Respondent requested various documents from NV, and NV says she emailed documents and outlined evidence for Respondent on December 3, 5, 7, and 9, and provided emails to that effect.

18. On December 11, 2018, Respondent emailed NV a draft RMC statement, on which NV provided input about 1.5 hours later. Respondent then emailed NV a document to sign and have notarized, which she did. Respondent then filed the document, and emailed it and exhibits to opposing counsel at 6:30 that evening, with a note that stated she would not be submitting a pre-trial statement at that late date.

19. Respondent emailed NV the documents and note stating that the filing fee was \$204, and she would invoice her later for that.

20. The December 12, 2018 hearing did not go well for NV. The Judge ruled against her, finding her position unreasonable and awarding Father his attorney's fees and costs.

21. On December 20, 2018, Respondent forwarded NV minute entries from Judge Cooper in the custody/visitation matter and from the commissioner in the name-change case. Respondent used her Bellah Perez email account instead of her personal Yahoo email account, which she had been using to communicate with NV from the outset.

22. Father's application for fees was filed on December 21, 2018, and the response was due January 10, 2019. Respondent claims that she forwarded Father's

application on receipt, but provided no evidence of this. Respondent sent NV a draft response to the application for fees on January 10, 2019. The email from Respondent forwarding the draft response was sent at 11:56 am, and Respondent filed the response six minutes later, at 12:02 pm, before NV had even seen it.

23. With respect to whether Respondent timely drafted a response to Father's fee application, communicated with NV about it, and was authorized to file it, Respondent points to a January 10 email from her to NV enclosing the draft, and a January 11 email response wherein NV says she "liked it." However, the January 11 email from NV states that she needs more time to review and comment on it, but "likes it so far." Further, NV asks, "what is the process in responding to this?" NV also provides specific criticisms about Father's fee application that she wanted Respondent to address in the response. As noted above, however, Respondent had already filed the response with no input or authority from NV.

24. In response to Respondent's assertion that NV had not paid her anything, NV provided a notarized affidavit, an invoice from Respondent, and a cancelled check. In her affidavit, NV asserts there was never any fee agreement or other official writing regarding representation, but that Respondent told her it would be flat fee of \$1,000 for the name-change, and \$2,000 for the custody/visitation

matter. NV is offended that Respondent referred to her as “indigent.” Indeed, the consultation form she provided to Respondent reflects her employment as a Senior Claims Examiner for Chubb Insurance, with an annual salary of \$60,000.

25. On January 10, 2019, Respondent emailed NV an invoice for \$1,065.48 in the name-change matter. The invoice was issued by Respondent under her own name, using her home address. It reflected \$500 “Flat Rate for Name Change of a minor,” and various costs for filing and service. Respondent told NV she accepted checks, Google Pay, and Venmo. NV paid by check dated January 11, 2019, made payable to Respondent, and Respondent cashed it. The email attaching the invoice noted that Respondent would “hold off on getting you the invoice for the [custody/visitation] matter until we have the results back on [Father’s] request for attorneys’ fees.” (Respondent in her initial response to the screening letter did not provide a copy of this particular email from her Yahoo account, although she did provide a different email from the same account on the same date.)

26. Respondent responded to one of NV’s January 11 emails about Father’s fee application and said, “Yes attorney’s fees can get up there, that is the benefit of having an attorney that does the flat rate for the fees.” Additionally, the response filed by Respondent represents to the Court that NV *had* incurred fees:

“The total fees by Petitioner was \$4,580.50, almost \$2,000 more than that of Respondent’s attorney fees.”

27. After NV provided the Bar her affidavit, Respondent’s invoice, and the cashed check, Respondent provided a supplemental response to the Bar in which acknowledged that she sent NV the invoice for \$1,065.48 the name-change matter, and asserted she just hadn’t found the email when preparing her initial response. She claimed that the invoice for this matter still reflects pro bono representation, because the \$500 flat fee was actually for a non-lawyer named Nicole Baxter to prepare the documents. Respondent provided an affidavit by and invoices from Baxter that avow that she assisted Respondent by drafting documents for her review, and that Respondent paid her for that service. In other words, the \$500 “flat fee” that NV paid Respondent was intended by Respondent to be reimbursement for what Respondent paid to Baxter.

28. However, the invoice from Respondent to NV does not disclose this, and makes it appear that Respondent charged NV \$500 as a flat fee for Respondent to draft the documents and provide the legal services for the name-change matter.

29. NV paid by check dated January 11, 2019. Respondent provided bank records that showed she deposited the check on January 24, but retained \$500 of it in cash with which she paid Ms. Baxter.

30. Respondent then also conceded that she told NV the custody/visitation matter would be a flat fee of \$2,000, but she asserts that was, again, to pay for the services of Baxter to prepare documents for Respondent to use in NV's case. Respondent asserts "I provided Ms. Baxter with form documents and she drafted the pleadings for the hearing and the exhibits. I incurred the costs with the knowledge that I would have to shoulder the expense as [NV] did not approve the costs involved with Ms. Baxter's services."

31. Respondent provided bank records, an affidavit, and invoices from Ms. Baxter that support her claim that she contracted with and paid Ms. Baxter to draft the documents in both of NV's cases. Respondent acknowledges that this was never disclosed to NV.

32. Respondent admits that in the response to Father's application she stated that NV incurred \$2,000 in fees. She asserts "I acknowledge that the correct statement would have been that opposing counsel's claimed attorney's fees [were] greater than the out of pocket costs that counsel for [NV] has incurred."

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits that she violated Rule 42, Ariz. R. Sup. Ct., specifically ER 1.2, ER 1.3, ER 1.4, ER 1.5(b), ER 3.1, ER 5.1, and ER 8.4(d).

CONDITIONAL DISMISSALS

The State Bar has conditionally agreed to dismiss allegations regarding ER 3.3(a)(1), ER 8.1(a), and ER 8.4(c).

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Reprimand with Probation for two (2) years, **the terms of probation which will consist of:**

1. LOMAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order.

Respondent shall submit to a LOMAP examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent will be responsible for any costs associated with LOMAP.

2. CLE: In addition to annual MCLE requirements, Respondent shall complete three (3) hours of Continuing Legal Education ("CLE") program(s) regarding fee agreements, to be approved by Bar Counsel, during the term of probation. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes and certificate of completion. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent will be responsible for the cost of the CLE.

Respondent shall commit no further violations of the Rules of Professional Conduct.

NON-COMPLIANCE WITH PROBATION

If Respondent fails to comply with any of the foregoing probation terms and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice

of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether Respondent breached a term of probation and, if so, to recommend an appropriate sanction. If the State Bar alleges that Respondent failed to comply with any of the foregoing terms the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter.

In determining an appropriate sanction the Court considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors.

The parties agree that the following *Standard 4.4 Lack of Diligence* is an appropriate Standard given the facts and circumstances of this matter: Standard 4.43 provides that a Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury. Here, Respondent failed to provide her client with a copy of Father's fee application and a draft of the response in time for the client to review them and provide input. Respondent filed the response six (6) minutes after sending the draft to her client without client input or authority.

Standard 4.6, Lack of Candor also applies. Standard 4.64 provides that an Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client. Here, Respondent failed to tell the client that the flat fees she was charging her were actually costs for a non-lawyer to draft documents. This was exacerbated by the fact that Respondent had no written fee agreements with the client.

Standard 7.0 Violations of Other Duties Owed as a Professional also applies. Standard 7.3 provides that a Reprimand is generally appropriate when a lawyer negligently engages in conduct that is in violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. Here, Respondent failed to affirmatively inform two different employers of clients she represented outside the firm for purposes of running conflict checks, and in violation of the firms' moonlighting prohibitions.

The duty violated

Respondent's conduct violated her duties to the client, the profession, the legal system and the public.

The lawyer's mental state

Respondent was negligently in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

There was actual harm to the client in not obtaining her input and authority before filing a response, and in failing to inform the client that Respondent was contracting out the drafting of documents in her cases to a non-lawyer. There was harm to the legal system in the misrepresentation made regarding whether her client

had incurred attorney's fees. There was potential harm to the profession, the legal system and the public in Respondent's failure to inform employers of her private clients for purposes of performing conflicts checks and in violation of the firms' moonlighting prohibitions.

Aggravating and mitigating circumstances

The presumptive sanction is Suspension because there are multiple, significant violations. The parties conditionally agree that the following aggravating and mitigating factors should be considered:

In aggravation:

- a) 9.22(c) pattern of misconduct. Respondent failed to have written fee agreements and failed to inform the client of the nature of costs, and the fact that a non-lawyer was drafting the documents, in two matters. Respondent also failed to inform two different employers of clients she was handling outside the firms, failed to run the clients through conflict check systems, and violated two firms' moonlighting prohibitions.
- b) 9.22(d) multiple offenses. Respondent violated her duties to a client and the Court in NV's matter, and she violated her duties to the profession, the legal

system, and the public in her failure to inform employers of clients she represented outside the firms.

- c) 9.22(f) misrepresentations during the disciplinary process. Respondent's initial response to the screening matter was misleading and incomplete.

In mitigation:

- a) 9.32(a) absence of a prior disciplinary record;
- b) 9.32(b) absence of a dishonest or selfish motive;
- c) 9.32(c) personal or emotional problems; Respondent's Father and Step-Mother were divorcing in Idaho during the relevant periods in 2017 and in 2018 (post-decree). Sadly, Respondent got drawn into the Idaho case, regarding property issues affecting her own daughter. This litigation was ongoing until just recently. With the clarity of hindsight, she recognizes what a stressful and distracting effect this had on her own ability to carefully conduct her practice.
- d) 9.32(l) remorse; Respondent has been cooperative with the Bar's investigation. She's fully and completely advised her present employer, Bellah Perez, of the instant matter along with all of the allegations and facts attendant to it. She is deeply mortified to be the recipient of a complaint. In

truth, she lacks organizational skills and record keeping habits and welcomes the opportunity to participate in LOMAP.

Discussion

The presumptive sanction should be mitigated to Reprimand with Probation.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. In re *Peasley*, 208 Ariz. 27 (2004). Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand with Probation and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this _____ day of August 2020

STATE BAR OF ARIZONA

/s/Kelly J. Flood

Kelly J Flood
Staff Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

DATED this _____ day of August, 2020.

Shasta Marie Nolte
Respondent

DATED this _____ day of August, 2020.

Padish Law Group PLLC

James E Padish
Counsel for Respondent

Approved as to form and content

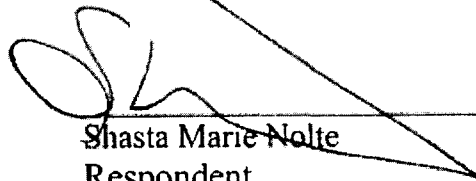
/s/Maret Vessella

STATE BAR OF ARIZONA

Kelly J Flood
Staff Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation.

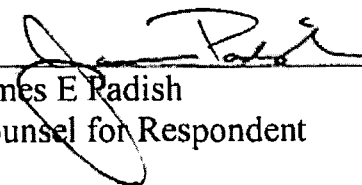
DATED this 4 day of August, 2020.



Shasta Marie Nolte
Respondent

DATED this 4 day of August, 2020.

Padish Law Group PLLC



James E Padish
Counsel for Respondent

Approved as to form and content

Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 4th day of August, 2020.

Copy of the foregoing emailed
this 4th day of August, 2020, to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 4th day of August, 2020, to:

James E Padish
Padish Law Group PLLC
7373 E Doubletree Ranch Rd Ste 255
Scottsdale, AZ 85258-2037
Email: JPadish@padishlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 4th day of August, 2020, to:

Lawyer Regulation Records Manager
State Bar of Arizona

The foregoing instrument is a full, true, and correct copy of the original on file in this office.
Certified this 10 day of July 2020
By *[Signature]*
Disciplinary Clerk
Supreme Court of Arizona

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

**SHASTA MARIE NOLTE,
Bar No. 030368**

Respondent.

PDJ 2020-9064

**FINAL JUDGMENT AND
ORDER**

State Bar No. 19-0705

FILED AUGUST 10, 2020

The Presiding Disciplinary Judge of the Supreme Court of Arizona accepted the parties' Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct.

Accordingly:

IT IS ORDERED Respondent, **SHASTA MARIE NOLTE, Bar No. 030368**, is reprimanded for her conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents.

IT IS FURTHER ORDERED Respondent is placed on probation for a period of two (2) years. The terms of probation are:

- a) Law Office Member Assistance Program (LOMAP): Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of this Order. Respondent shall submit to a LOMAP

examination of their office procedures. Respondent shall sign terms and conditions of participation, including reporting requirements, which shall be incorporated herein. Respondent shall be responsible for any costs associated with LOMAP.

b) Continuing Legal Education (CLE): In addition to annual MCLE requirements, Respondent shall complete three (3) hours of Continuing Legal Education ("CLE") program(s) regarding fee agreements within the term of probation. Respondent shall provide the State Bar Compliance Monitor with evidence of completion of the program(s) by providing a copy of handwritten notes and certificate of completion. Respondent should contact the Compliance Monitor at 602-340-7258 to make arrangements to submit this evidence. Respondent shall be responsible for the cost of the CLE.

Respondent shall commit no further violations of the Rules of Professional Conduct.

IT IS FURTHER ORDERED Respondent shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00, within thirty (30) days from

the date of this Order. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

DATED this 10th day of August, 2020.

William J. O'Neil
William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed
this 10th day of August, 2020, to:

James E. Padish
Padish Law Group PLLC
7373 E Doubletree Ranch Rd Ste 255
Scottsdale, AZ 85258-2037
Email: JPadish@padishlaw.com
Respondent's Counsel

Kelly J Flood
Staff Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: BEnsign

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

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INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

- (a) “BODA” is the Board of Disciplinary Appeals.
- (b) “Chair” is the member elected by BODA to serve as chair or, in the Chair’s absence, the member elected by BODA to serve as vice-chair.
- (c) “Classification” is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a “complaint” or an “inquiry.”
- (d) “BODA Clerk” is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.
- (e) “CDC” is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.
- (f) “Commission” is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- (g) “Executive Director” is the executive director of BODA.
- (h) “Panel” is any three-member grouping of BODA under TRDP 7.05.
- (i) “Party” is a Complainant, a Respondent, or the Commission.
- (j) “TDRPC” is the Texas Disciplinary Rules of Professional Conduct.
- (k) “TRAP” is the Texas Rules of Appellate Procedure.
- (l) “TRCP” is the Texas Rules of Civil Procedure.
- (m) “TRDP” is the Texas Rules of Disciplinary Procedure.
- (n) “TRE” is the Texas Rules of Evidence.

Rule 1.02. General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 [17.01] applies to the enforcement of a judgment of BODA.

Rule 1.03. Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04. Appointment of Panels

- (a) BODA may consider any matter or motion by panel,

except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

- (b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05. Filing of Pleadings, Motions, and Other Papers

- (a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

- (1) Email Address. The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

- (2) Timely Filing. Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

- (3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

- (4) Exceptions.

- (i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

- (ii) The following documents must not be filed electronically:

- a) documents that are filed under seal or subject to a pending motion to seal; and

- b) documents to which access is otherwise restricted by court order.

- (iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

- (5) Format. An electronically filed document must:

- (i) be in text-searchable portable document format (PDF);
- (ii) be directly converted to PDF rather than scanned, if possible; and
- (iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

- (1) an “/s/” and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or
- (2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06. Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent’s signature.

Rule 1.07. Hearing Setting and Notice

(a) **Original Petitions.** In any kind of case initiated by the CDC’s filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the

request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08. Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09. Pretrial Procedure

(a) Motions.

(1) Generally. To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) For Extension of Time. All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

- (i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (ii) if an appeal has been perfected, the date when the appeal was perfected;
- (iii) the original deadline for filing the item in question;
- (iv) the length of time requested for the extension;
- (v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

- (1) marked;
- (2) indexed with the title or description of the item offered as an exhibit; and
- (3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10. Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

- (1) as required by the TRDP; and
- (2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11. Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in

the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12. BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA’s adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13. Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14. Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15. Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

II. ETHICAL CONSIDERATIONS

Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02. Confidentiality

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction

Rule 2.03. Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse him or herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02. Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and

all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21 [2.20].

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24 [2.23], the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02. Record on Appeal

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) Responsibility for Filing Record.

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

- a) a notice of appeal has been filed;
- b) a party has requested that all or part of the reporter's record be prepared; and
- c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) Preparation of Clerk's Record.

(1) To prepare the clerk's record, the evidentiary panel clerk must:

- (i) gather the documents designated by the parties'

written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) **Preparation of the Reporter's Record.**

(1) The appellant, at or before the time prescribed for

perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise

(6¹) 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.