

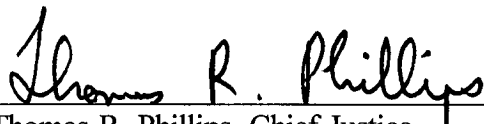
ORDER
of the
Supreme Court of Texas

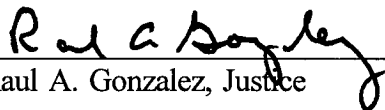
**INTERNAL PROCEDURAL RULES OF THE
BOARD OF DISCIPLINARY APPEALS**


The Supreme Court of Texas hereby amends the attached **Internal Procedural Rules of the Board of Disciplinary Appeals** as shown therein.

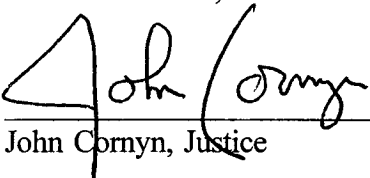
This amendment shall be effective immediately.

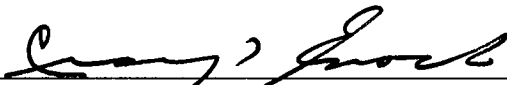
In Chambers, this 15th day of October, 1996.

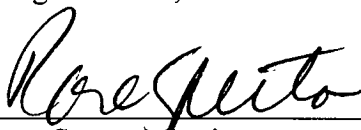

Thomas R. Phillips, Chief Justice



Raul A. Gonzalez, Justice


Nathan L. Hecht, Justice

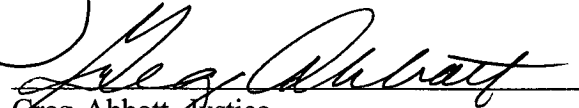

John Cornyn, Justice


Craig T. Enoch, Justice


Rose Spector, Justice


Priscilla R. Owen, Justice


James A Baker, Justice


Greg Abbott, Justice

SECTION 1: GENERAL PROVISIONS

Rule 1.01 Definitions

*(These were previously under 2 separate sections:
Classification Appeals and Evidentiary Appeals)*

~~(a) “Appellant” is the party appealing the findings, conclusions, or sanctions imposed, by an evidentiary panel;~~

~~(b) “Appellee” is any party adverse to the appellant;~~

~~(c) “Bar” is the State Bar of Texas;~~

(a) **“Board of Disciplinary Appeals” “BODA” are the nine lawyers appointed by the Texas Supreme Court to hear appeals of disciplinary matters is the Board of Disciplinary Appeals.**

(b) **“Chair” is the member elected by BODA to serve as chairperson.**

(c) **“Classification” is the determination pursuant to TEXAS RULES OF DISCIPLINARY PROCEDURE (“TRDP”) 2.09 by the Counsel Chief Disciplinary Counsel (“CDC”) as to whether the a written statement constitutes is to be considered a “complaint” or an “inquiry.”**

~~(d) “Classification Notification” is the letter sent by the CDC notifying Complainant of the classification decision of the written statement.~~

(d) **“Clerk” is the staff person designated Executive Director or other person appointed by BODA to handle appeals assume all duties normally performed by the clerk of a court.**

~~(f) “Complaint” is the formal allegations made by the Complainant that, if true, would constitute professional misconduct.~~

~~(j) “Complainant” is the person or persons alleging wrongful conduct.~~

~~(k) “Chief Disciplinary Counsel” is the Office of the General Counsel for the Bar.~~

(e) **“Executive Director” is the Executive Director of BODA.**

~~(e) “Panel” is the evidentiary panel appointed by the Grievance Committee Chair;~~

(f) **“Board Panel” “Panel” is any three-member grouping of BODA.**

(g) **“Party” is a Complainant, Respondent, or the CDC.**

~~(e) “Respondent” is the attorney at law alleged to have committed the misconduct.~~

~~(p) “TRDP” are the Texas Rules of Disciplinary Procedure.~~

Rule 1.02 General Powers

Pursuant to TRDP 7.08J, BODA shall have and exercise all the powers of either a trial court or appellate court, as the case may be, in hearing and determining disciplinary proceedings; except that BODA shall not have contempt or other enforcement power. BODA judgments and orders shall be enforced in accordance with TRDP 15.03.

Rule 1.03 Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TEXAS RULES OF CIVIL PROCEDURE (“TRCP”), TEXAS RULES OF APPELLATE PROCEDURE (“TRAP”), and TEXAS RULES OF CIVIL EVIDENCE (“TRCE”) apply to all disciplinary matters before BODA, except appeals from classification decisions.

Rule 1.04 Appointment of Panels

(a) BODA may consider any matter or motion through appointment of a panel, except as expressly provided otherwise. The Chair may delegate appointment of panels for any BODA action to the Executive Director. Decisions shall be by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting *en banc*. Nothing contained in these rules shall be construed to give a party the right to be heard by BODA sitting *en banc*.

(b) Any disciplinary matter naming a BODA member as Respondent shall be considered by BODA sitting *en banc*.

Rule 1.05 Record Retention

Records of appeals from classification decisions shall be retained by the BODA clerk for a period of at least three (3) years from the date of disposition. Records of other disciplinary matters shall be retained for a period of at least five (5) years from the date of final judgment, or for at least one (1) year after the date a suspension or disbarment ends, whichever is later.

Rule 1.06 Trial Briefs

In any disciplinary proceeding before BODA, all trial briefs and memoranda must be filed with the clerk no later than ten (10) days before the hearing, except upon leave of BODA.

Rule 1.07 Service

In any disciplinary proceeding before BODA initiated by service of a petition upon the Respondent, service shall be by personal service, certified mail with return receipt requested and delivery restricted to addressee only, or in any other manner 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. The CDC may serve a petition by certified mail itself without the appointment of a private process server. To establish service by certified or registered mail, the return receipt must contain the addressee’s signature.

Rule 1.08 Publication

The office of the CDC shall publish these rules as part of the TDRPC and TRDP and attach a copy to each petition filed with BODA seeking compulsory discipline, reciprocal discipline, or revocation of probation.

Rule 1.09 Photocopying Costs

The clerk of BODA may charge to the requestor a reasonable amount to be set by BODA for the reproduction of non-confidential documents filed with BODA. The fee shall include compensation for staff time and recovery of actual production costs.

SECTION 2: ETHICAL CONSIDERATIONS

Rule 2.01 ~~Conflicts of Interest~~ Disqualification

No member of BODA shall represent or counsel a respondent ~~attorney~~ with respect to any disciplinary matter. No member of BODA shall testify voluntarily or offer to testify voluntarily on behalf of a respondent in any disciplinary matter.

Rule 2.02 Confidentiality

(a) All BODA deliberations are confidential and shall not be disclosed by BODA members or staff. Classification appeals files and disability suspension files are confidential pursuant to the TRDP.

(b) If subpoenaed or otherwise compelled by law to testify in any proceeding, members of BODA shall not disclose ~~confidential~~ matters discussed in ~~executive session~~ **conference** concerning any disciplinary case, unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any **disciplinary** proceeding, including depositions, a member of BODA shall promptly notify the Chairperson of BODA and the CDC.

Rule 2.03 Recusal of BODA Members

(a) BODA members shall recuse themselves from any discussion and voting in a disciplinary matter **pending before BODA** in which ~~the member~~: a judge would be disqualified or subject to recusal under TRCP 18b or other Texas law.

- (1) ~~represents or has represented either the Complainant or Respondent attorney in any legal matter;~~
- (2) ~~is related by blood, adoption, or marriage as an ancestor or descendant, brother, sister, aunt, uncle, or a son or daughter of a brother or sister of the whole or half blood or a first-cousin;~~

~~(3) has advised or assisted the Respondent attorney in that disciplinary matter or any other related disciplinary matter; or~~

~~(4) has personal knowledge of the material facts in a disciplinary matter or been retained or consulted as an expert witness in that matter.~~

(b) ~~Members of BODA members~~ may recuse themselves from any discussion and voting in a disciplinary matter in which the member knows of any other reason why he or she should not participate in deliberations or voting with respect to the disciplinary matter.

(c) **Nothing in these rules shall impute disqualification to lawyers who are members of or associated with BODA members' firms from serving on grievance committees or representing parties in disciplinary or legal malpractice cases; however, BODA members shall recuse themselves from any matter in which any lawyer who is a member of or associated with a BODA member's firm represents a party before any disciplinary proceeding or before BODA.**

(d) **A BODA member 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 2.04—Other Litigation Communications with BODA

[This has been moved to Rule 2.03 as subsection (d)]

Correspondence or other communication relative to any matter pending before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.

SECTION 3: CLASSIFICATION APPEALS

Rule 3.01—Definitions

(This rule has been transferred to Section 1: General Provisions)

Rule 3.01 Classification Notification Notice of Appeal

~~(a) To Complainant~~

~~(1) The CDC shall notify Complainant of the disposition of the written statement.~~

~~If the matter is not processed as a Complaint, Complainant shall be allowed to amend the written statement and refile or appeal to BODA.~~

~~(b) To Respondent~~

~~(1) The CDC shall notify Respondent of the disposition of the written statement.~~

(a) If the written statement filed by the Complainant is not classified as a complaint, the CDC shall notify the Complainant of his or her right as set out in TRDP 2.09. If the matter written statement filed by the Complainant is certified classified as a Complaint, the CDC shall notify the Respondent shall be of his or her right allowed to appeal to BODA, and that such appeal may be made separately from the response to the complaint.

(b) To effectuate an appeal, the CDC shall send Complainant the appealing party an Appeal Notice form with the classification Notification disposition The Appeal Notice form which shall include, but is not limited to, the docket # number of the matter, the time deadline for appealing as set out in TRDP 2.09, and address for mailing the Appeal Notice.

Rule 3.02 Record on Appeal

~~To effectuate an appeal, the CDC shall send Respondent an Appeal Notice form with the Classification Notification. The Appeal Notice form shall include, but is not limited to, the docket # of the matter and address for mailing the Appeal Notice.~~

BODA shall review only the original complaint on appeals from classification decisions. The CDC shall forward a copy of the complete complaint to BODA with supporting documentation as originally filed. BODA shall not consider any supplemental material, whether filed by the Complainant or Respondent, which was not reviewed as part of the original screening and classification decision.

Rule 3.03 Notice of Disposition of Appeal

(a) ~~The office of BODA shall provide mail Complainant, and Respondent, and the CDC written notice of the decision of the appeal (“Disposition of Appeal Notice”). Such notice is to be mailed by first class mail to the addresses provided BODA by the CDC in the appeal Notice transmittal.~~

SECTION 4: INTERNAL RULES FOR APPEALS FROM EVIDENTIARY PANEL HEARINGS TO THE BOARD OF DISCIPLINARY APPEALS

Definitions

(This rule has been transferred to Section 1: General Provisions.)

Rule 4.01 Signing, Filing, and Service

(a) **Signing.** Each brief, motion or other paper filed shall be signed by at least one attorney for the party or by the party *pro se* and shall give the State Bar of Texas identification number, mailing address, telephone number, and telecopier number, if any, of each attorney whose name is signed thereto, or of the party (if applicable).

(b) **Filing.** The filing of records, briefs and other papers with BODA as required by these rules

shall be made by filing same with the clerk. Papers shall not be deemed filed if sent to any individual BODA member or to the ~~General Counsel~~ CDC's office.

(c) **Number of Copies.** Each party shall file an original and ~~ten (10)~~ **twelve (12)** copies of all briefs ~~petitions, motions and other papers~~ with the clerk. **An original and three (3) copies of all other motions shall be filed. Only one copy of the transcript and statement of facts shall be filed.**

(d) **Service.** Copies of all papers filed by any party shall, at or before the time of filing, be served on all other parties as required and authorized by the TRCP.

~~Rule 4.02 Communications with BODA~~

[moved to Section 2 as Rule 2.04]

~~Correspondence or other communications relative to any matter before BODA must be conducted with the clerk and shall not be addressed directly to or conducted with any BODA member.~~

Rule 4.032 Computation of Time

(a) **Beginnings of Periods.** The date the Chair of the evidentiary panel signs its decision shall constitute the date of notice under TRDP 2.19.

(b) **TRCP Followed.** **Computation of time for purposes of these internal rules shall follow the TRCP.**

(e) *[moved to 4.10]*

Rule 4.043 Record on Appeal

(a) **Contents.** The record on appeal shall consist of a transcript and **where necessary to the appeal**, a statement of facts.

(b) **Stipulation as to Record.** The parties may designate parts of the transcript and statement of facts to be included in the record on appeal by written stipulation filed with **the custodian of records of the evidentiary panel.**

(c) **Burden on Appellant.** The appellant or other party seeking review has the burden of **requesting and timely** filing the record with **the BODA clerk** and seeing that a sufficient record is presented to show error requiring reversal. **The party initiating the appeal shall pay the cost of preparing the record.**

(d) **Transcript.**

(1) Unless otherwise stipulated by the parties, the transcript on appeal shall include **all papers on file with the evidentiary panel, including, but not limited to**, all pleadings upon which the hearing was held, the docket sheet, the **evidentiary panel's charge, final hearing order, and** findings of fact and conclusions of law,

all other pleadings, the judgment or other order(s) appealed from, the notice of decision sent each party, any post-submission pleadings and briefs, and any notice of appeal.

- (2) **Upon receipt of a copy of the Notice of Appeal, the custodian of records in the individual CDC office which conducted the evidentiary hearing shall prepare and transmit the transcript to BODA. The transcript shall be indexed chronologically listing all documents contained therein beginning with the first pleading filed. If the CDC is unable for any reason to prepare and transmit the transcript by the due date, it shall promptly notify BODA and the parties, explain the reason(s) why it cannot be timely filed, and give the date by which it expects the transcript can be filed.**

(e) **Statement of Facts.** The appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter for the statement of facts, designating the portion of the evidence and other proceedings to be included therein. A copy of such request shall be filed with the evidentiary panel and BODA and ~~another copy~~ be served on the appellees. The statement of facts shall be certified by the official court reporter.

(f) **Non-Stenographic Recordings.** All testimony and evidence may be recorded at the evidentiary hearing by means other than stenographic recording, including videotape recordings; however, the non-stenographic recording shall not dispense with the requirement of a stenographic transcription of the hearing. ~~If a non-stenographic recording is included as part of the record, (10) copies shall be filed with the clerk.~~ **In appeals to BODA, the non-stenographic recording must be transcribed, and the transcription filed as the statement of facts.**

(g) **Other Requests.** Within ten (10) days after service of a copy of appellant's request for the **transcript and** statement of facts, any party may in the same manner request additional portions of the evidence and other proceedings to be included therein.

(h) **Inaccuracies or Defects.** Any inaccuracies in the record may be corrected by an agreement of the parties. Any dispute regarding the statement of facts shall be submitted by BODA to the **evidentiary panel for resolution** and to conform the statement of facts.

Rule 4.054 Time to File Record

(a) **Timetable.** The transcript and statement of facts (**including a non-stenographic recording which has been transcribed**) shall be filed with the BODA clerk within thirty (30) days after the date of the Notice of Appeal is **received by BODA**. Failure to file either the transcript or the statement of facts within such time shall not affect BODA's jurisdiction, but shall be grounds for dismissing the appeal, affirming the judgment appealed from, disregarding materials filed **late**, or applying presumptions against the appellant.

(b) **Supplemental Record.** If anything material to either party is omitted from the transcript or statement of facts BODA may, upon written motion of a party or upon its own motion, direct a supplemental record to be certified and transmitted by the ~~panel~~ **CDC** or the official court reporter.

Rule 4.065 Copies of the Record

The record shall not be withdrawn from the custody of the clerk except upon the order of a BODA member. Any party may obtain a copy of the record or any designated part thereof by making written request to the clerk and paying copying charges.

Rule 4.076 Requisites of Briefs

(a) Appellant's Filing Date. Appellant's ~~shall file his~~ brief is **due** within thirty (30) days after the filing of the ~~transcript and statement of facts record~~.

(b) Appellee's Filing Date. Appellee's ~~shall file their~~ brief is **due** within ~~thirty (30)~~ **twenty-five (25)** days after the filing of appellant's brief.

(c) Contents. Briefs shall 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 with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are cited. The subject matter of each point or group of points shall be indicated in the table of contents.
- (3) a brief general statement of the nature of the cause or offense and the result.
- (4) a statement of the points upon which an appeal is predicated.
- (5) a brief of the argument.
- (6) prayer for relief.
- (7) **an appendix consisting of copies of pertinent parts of the record upon which the party relies.**

(d) Length of Briefs. Briefs shall be **typewritten or otherwise legibly** printed on letter-size (8½" x 11") paper and shall not exceed fifteen (15) pages in length, exclusive of pages containing names and addresses of parties, table of contents, index of authorities, points of error, and any addenda **or appendix** containing statutes, rules, regulations, etc., except upon leave of BODA.

~~(e) **Briefs Typewritten or Printed.** Briefs may be typewritten (double-spaced) or otherwise legibly printed.~~

(e) Amendment or Supplementation. Briefs may be amended or supplemented upon leave of BODA.

Rule 4.087 Oral Argument

(a) **Request.** A party desiring oral argument before BODA shall request same in writing at the time the files his brief is filed. **If oral argument is granted, the clerk shall notify the parties of the time and place for submission.** BODA may also advance cases without oral argument or direct parties on its own initiative to appear and submit oral argument on a case.

(b) **Time Allowed.** Each party shall have ~~thirty (30)~~ **twenty (20)** minutes in which to argue ~~before the Board~~ with an additional ~~fifteen (15)~~ **ten (10)** minutes for appellant to conclude. **BODA** may, in its discretion, extend or shorten the time allowed for oral argument.

Rule 4.098 Motions with the Board Generally

An application for an order or other relief shall be made by filing a motion **with the BODA clerk** for same supported by sufficient cause with proof of service on all other parties. The motion shall be ~~verified~~, state with particularity the grounds on which it is based and set forth the ~~order or~~ relief sought. All supporting briefs, affidavits, or other papers shall be served and filed with the motion. Any response to a motion must be filed within ~~fifteen (15)~~ **seven (7)** days after the date of service of the motion ~~the motion is filed~~, except upon leave of BODA.

Rule 4.409 Motions for Extension of Time

(a) **When due.** Any request for extension of time must be filed with the BODA clerk no later than seven (7) days after the last day allowed for filing the item in question.

(a b) **Contents.** All motions for extension of time shall be in writing, comply with Rule ~~4.08~~ **4.08**, and specify the following:

- (1) the date of notice of decision of the evidentiary panel, together with the number and style of the case;
- (2) if the appeal has been perfected, the date when the appeal was perfected;
- (3) the original deadline for filing the item in question;
- (4) the length of time requested for the extension;
- (5) the number of extensions of time which have been granted previously regarding the item in question; and,
- (6) the facts relied upon to reasonably explain the need for an extension.

(b c) **For Filing Statement of Facts.** When an extension of time is requested for filing the statement of facts, the facts relied upon to reasonably explain the need for an extension must be supported by an affidavit of the court reporter, which shall include the court reporter's estimate of the earliest date when the statement of facts will be available for filing.

(e d) For Filing Transcript. Any motion for extension of time to file the transcript shall also be filed with the ~~panel~~ CDC, and the clerk shall notify the ~~panel~~ CDC of BODA's decision.

Rule 4.140 Decision and Judgment

(a) ~~Panel and En Banc Submission.~~ Any appeal to the Board or any motion pertaining thereto may be heard *en banc* or by a panel consisting of three (3) members assigned by the Chair.

(b a) Decision. BODA may affirm the decision of the evidentiary panel, reverse and render such decision as the panel should have rendered, or remand the cause to the **evidentiary** panel for further proceedings.

(e b) Opinions. BODA may render judgment with or without written opinion.

(c) Notice of Orders and Judgment. When BODA renders judgment or grants or overrules a motion, the clerk shall give notice to the parties or their attorneys of record of the disposition made of the cause or of the motion, as the case may be. The notice shall be given by first-class mail and be so marked so as to be returnable to the clerk in case of nondelivery.

(d) **Mandate.** In every case where BODA grants appellate review and issues a judgment, BODA shall issue a mandate in accordance with the judgment and deliver it to the evidentiary panel.

SECTION 5: PETITIONS TO REVOKE PROBATION

Rule 5.01 Initiation and Service

(a) Pursuant to Rule 2.20 of the Texas Rules of Disciplinary Procedure, if the CDC of the State Bar of Texas ~~Before~~ filing a motion with BODA seeking to revoke the probation of an attorney who has been sanctioned, **the CDC shall contact the clerk to obtain a hearing date. The case shall be set for the next available BODA meeting date, or the Chairman may designate a three-member panel to hear the motion, if necessary, to meet the thirty day requirement of TRDP 2.20. The CDC shall include a hearing notice with the time, date, and location of the hearing in its petition.**

(b) Pursuant to TRDP 2.20, upon filing of the motion, the CDC shall serve the Respondent attorney with the motion and supporting documents, if any, in accordance with the Texas Rules of Civil Procedure. **The CDC shall notify BODA of the date service is obtained on the Respondent.**

Rule 5.02 Hearing

Within thirty (30) days of service of the motion on the Respondent attorney, BODA, ~~meeting en banc or by way of a 3-member panel,~~ shall hear and determine the motion pursuant to the guidelines set out in Rule 2.20 of the Texas Rules of Disciplinary Procedure. **shall docket and call the matter for a hearing; however, upon a showing of good cause by a party or upon its own motion, BODA may continue the case to a future hearing date as circumstances require.**

**SECTION 6: RULES OF PROCEDURE FOR
COMPULSORY DISCIPLINE MATTERS
BEFORE THE BOARD OF DISCIPLINARY APPEALS**

Rule 6.01 Initiation of Proceeding

(a) Pursuant to TRDP 8.03, the State Bar of Texas CDC shall file a petition for compulsory discipline with BODA and serve the Respondent attorney in accordance with the TRCP Rule 1.07 above. Prior to filing said petition, the CDC shall call the BODA clerk to obtain a hearing date. Such notice The petition shall include a hearing notice designating the date, time, and place of hearing, which shall not be fewer less than 20 forty-five (45) days from the service filing date of the petition or less than twenty-one (21) days from the date of service of the petition. Within twenty (20) days of service of the petition, the Respondent shall file an answer setting forth:

- (1) Any factual dispute as to whether the Respondent is the same person as the party adjudicated guilty or who received probation with or without an adjudication of guilt;
- (2) Any factual dispute as to the validity of the conviction;
- (3) Any legal argument that the offense for which the Respondent has been convicted is not an Intentional Crime as defined in Texas Rule of Disciplinary Procedure 1.06(O).

(b) Upon the filing of the Complaint, the Chair shall designate a 3-member panel that will handle the case if necessary. Upon receipt of the Respondent's answer, a copy of the petition and answer will be sent to each member on the 3-member panel. The Chairman shall contact the panel members to establish a hearing date.

The hearing shall be limited to the introduction of evidence contesting the issue of identity or challenging the validity of the conviction. Legal argument shall be limited to whether the offense for which the Respondent has been convicted is an Intentional Crime as defined in Texas Rule of Disciplinary Procedure 1.06(O).

(b) A decision shall be rendered by the panel as soon as practicable after the hearing. Oral rulings at the conclusion of the hearing are permitted and can subsequently be reduced to writing.

Rule 6.02 Notice of Disposition of Appeal Decision

(a) The panel shall provide the office of the Board written notice of the decision on the appeal. The BODA clerk shall mail a "Disposition of Appeal Notice" copy of the judgment to the address provided in the Appeal Notice parties within ten (10) days from the receipt of the written notice of the Panel's decision date the decision is signed by the Chair. (e) The Disposition of Appeal Notice Transmittal of the judgment shall include, but is not limited to, the following all information required by the TRDP and the Supreme Court.

- (1) An appeal from a determination of BODA shall be to the Texas Supreme Court.
- (2) If taken, the appeal must be filed with the Clerk of the Supreme Court within

~~fourteen days after the receipt by the appealing party of the Disposition of Appeal Notice.~~

- ~~(3) The appeal must be made pursuant to the applicable Texas Rules of Appellate Procedure.~~
- ~~(4) Oral argument may be granted on motion to the Supreme Court.~~
- ~~(5) The case shall be reviewed under the substantial evidence rule.~~
- ~~(6) The Court may affirm a decision of BODA by order without written opinion.~~

**SECTION 7: RULES OF PROCEDURE FOR
RECIPROCAL DISCIPLINE MATTERS
BEFORE THE BOARD OF DISCIPLINARY APPEALS,
TEXAS RULES OF DISCIPLINARY PROCEDURE**

Rule 7.01 Initiation of Proceeding

(a) Pursuant to ~~the~~ TRDP 9.01 and 9.02, the CDC shall file a petition for reciprocal discipline with BODA when information is received indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction. **Prior to filing the petition for reciprocal discipline, the CDC shall call the BODA clerk to obtain a hearing date which shall not be less than forty-five (45) days from the date of filing of the petition.**

(b) The petition shall request that the Respondent attorney be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction including a copy of the order or judgment, if any, imposed on the Respondent attorney. The CDC shall serve the Respondent attorney ~~the show cause notice, including the petition, order and accompanying documents, if any,~~ in accordance with ~~the Texas Rules of Civil Procedure Rule 1.07~~ above.

Rule 7.02 Order to Show Cause

Upon the filing of the petition with BODA, the Chairman ~~of the Board~~ shall immediately issue a show cause order and **send forward** it to the CDC ~~of the State Bar of Texas~~. **Upon receipt of the show cause order, the CDC, who shall serve the order on the Respondent along with a hearing notice setting forth the date, time, and place of the hearing and file a copy with BODA.** ~~issue a show cause notice requesting that the Respondent attorney reply to the petition and order within thirty days of the date it is served, to show cause why the imposition of identical discipline in this state would be unwarranted. The CDC shall also send a copy of the show cause notice and any accompanying documents to the Chairman of BODA. The CDC shall notify BODA of the date service is obtained.~~

Rule 7.03 Attorney's Response

If, on or before the thirtieth day after service of the **show cause order and hearing** notice by the CDC, the Respondent ~~attorney~~ does not ~~respond by filing~~ an answer, **but thereafter appears at the hearing, and the Board concludes that the Respondent attorney has received proper service of the notice and that thirty days have expired since the notice was served,** the Board shall enter judgment as directed in Rule ~~9.03 of the TRDP~~ BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition for reciprocal discipline.

(b) ~~If, on or before the thirtieth day after service of the notice, the Respondent attorney files an answer, with BODA, the Respondent attorney and BODA shall proceed as directed in the Texas Rule of Disciplinary Procedure Rule 9.03 and Rule 9.04. Filing deadlines shall be calculated in accordance with the Texas Rules of Civil Procedure.~~

SECTION 8: INTERNAL OPERATING PROCEDURES FOR DISABILITY SUSPENSIONS

Rule 8.01 Appointment of District Disability Committee

(a) ~~If the investigatory panel of the grievance committee finds just cause to believe the Respondent an attorney is suffering from a disability and the Board of Disciplinary Appeals has reviewed the record and the finding on a substantial evidence standard confirming the investigatory panel, the following shall be rules in this section shall to be apply ied by to the District Disability Committee in de novo proceedings described in Part 12, pursuant to TRDP Rule 12.03 of the TRDP.~~

(b) **Upon receiving an investigatory panel's certification that a Respondent is suffering from a disability, the BODA Chair shall appoint a District Disability Committee in compliance with TRDP 12.02, and designate a chair. The BODA clerk shall forward the entire record of the investigatory hearing to the disability committee chair. The disability committee shall notify the Respondent that it has been appointed and forward a copy of the procedural rules governing disability proceedings.**

(c) **A Respondent notified to appear at a District Disability Committee hearing may, at any time, waive that hearing and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to so waive the hearing.**

Rule 8.02 Hearing Order

(a) ~~Duty of Chief Disciplinary Counsel~~ **(+) Upon being notified that the committee's recommendation was affirmed by the Board of Disciplinary Appeals District Disability Committee has been appointed by BODA, the CDC shall, within twenty (20) days, file with the chair of the District Disability Committee and then serve upon the Respondent by certified mail a Proposed Disability Committee and then serve upon the Respondent by certified mail a proposed hearing order containing (a) a list of names and addresses of all witnesses expected to be called to testify before the panel District Disability Committee and (b) a list of all exhibits expected to be presented to the panel offered at the hearing.**

(b) ~~Duty of the Respondent~~ **The Respondent shall, within twenty (20) days after the date of notification by the Board of Disciplinary Appeals that the Board has affirmed the grievance committee's finding receiving the CDC's proposed hearing order, file with the Chair of the District Disability Committee and serve the CDC by certified mail a proposed hearing order including (a) a list of names and addresses of all witnesses expected to be called to testify before the panel District Disability Committee and (b) a list of all exhibits expected to be presented to the panel offered at the hearing. Respondent's failure to timely file the proposed hearing order will not affect the responsibility of the District Disability Committee to issue a final hearing order.**

(c) ~~Duty of the District Disability Committee~~ The District Disability Committee Chair ~~shall then have the right to~~ **may** adopt either the CDC's proposed hearing order, the Respondent's proposed hearing order, or an order of his or her own. The **adopted order shall be the final hearing order and shall** ~~will~~ contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the Respondent. The **final hearing order shall** ~~should~~ then be served by certified mail, **return receipt requested, on to both the Respondent and CDC with a copy to BODA.**

Rule 8.03 Provisions for Physical or Mental Examinations

(a) The District Disability Committee ~~shall have the right to~~ **may** order the Respondent to submit to a physical **and/or** mental examination by a ~~physician or psychologist~~ **qualified health care or mental health care professional.** The order ~~may be made by notice to the person to be examined and shall~~ **Respondent shall be given reasonable notice of the examination by written order** specifying the time, place, manner, **and scope, and name of the person conducting** of the examination ~~along with the person or persons by whom it is to be made as selected by the Chief Disciplinary Counsel.~~

(b) The ~~physician or psychologist~~ **examining professional** shall deliver to the Respondent and CDC a copy of a detailed written report ~~of the examining physician or psychologist~~ setting out findings, including results of all tests made, diagnoses and conclusions, together with like reports of ~~all other any~~ **previous examinations he or she has made** for the same condition.

(c) If the District Disability Committee orders the Respondent to submit to an examination, and the Respondent fails to do so at the time and place and in the manner so ordered, the finding of the local grievance committee ~~as affirmed by the Board of Disciplinary Appeals~~ shall be final, and the Respondent will be deemed to be suffering from a disability as defined in **TRDP Rule 1.06H** ~~of the TRDP.~~

Rule 8.04 Ability to Compel Attendance

The Respondent and the CDC may, if they so choose, confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC, by requesting a subpoena be issued by the **District Disability Committee Chair.**

Rule 8.05 Respondent's Right to Counsel

~~The Respondent may have counsel present during the hearing. The Respondent and the CDC may, if they so choose, confront witnesses. Respondent does not have an absolute right to counsel, and continuances will not be granted solely to allow Respondent additional time to obtain counsel.~~

(a) **The notice to the Respondent transmitting the CDC's proposed hearing order shall state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing and that failure to comply with the procedure set out in these rules shall be deemed a waiver of Respondent's right to request appointment of counsel.**

(b) **If the Respondent wishes to have counsel appointed pursuant to TRDP Rule 12.02, a written request must be made to the Chair of the District Disability Committee with a copy to BODA within twenty (20) days of the date Respondent receives the CDC's proposed hearing order. Failure**

to so request appointment of counsel within the twenty days shall be deemed a waiver of Respondent's right to request appointment of counsel.

Rule 8.06 Limited Discovery

(a) In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause and substantial need. The parties seeking discovery must file with the District Disability Committee a verified written request for discovery showing good cause and substantial need ~~no later than twenty days after the notification of the Board's affirmation of the district Grievance committee's finding of disability with the proposed hearing order.~~

(b) If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the discovery, including in the **final hearing** order limitations or deadlines on the discovery. Such discovery, if any, as may be permitted, must be conducted by methods provided in the TRCP in effect at the time and may upon motion be enforced by a district court of proper jurisdiction.

(c) A decision of a District Disability Committee on a discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may be based upon the granting or denial of a discovery request without a showing of material unfairness or harm.

Rule 8.07 Admissibility of Evidence Hearing

(a) ~~The burden of proof is on the CDC to~~ **must** prove that the Respondent is suffering from a disability by a preponderance of the evidence. The Chair of the District Disability Committee shall admit all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the TRCE; provided, however, that the admission or exclusion of evidence shall be in the sole discretion of the Chair. ~~of the District Disability Committee, and~~ No ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the TRCE.

(b) Such proceedings shall begin and conclude no earlier than thirty **(30)** days from the ~~time that the Board of Disciplinary Appeals affirms the finding of the district grievance committee~~ **date the Respondent receives the CDC's proposed hearing order** nor later than ninety **(90)** days from that ~~finding date~~; however, failure to do so does not affect the jurisdiction of the District Disability Committee to act.

(c) **The District Disability Committee shall notify BODA of the hearing date and time. If the Committee is unable for any reason to set a hearing date within ninety (90) days of the date the Respondent receives the proposed hearing order, it shall so notify BODA and explain the circumstances delaying the hearing. If the committee fails to set the hearing timely or notify BODA of the reasons for the delay, BODA may appoint a new committee to handle the case.**

Rule 8.08 Notice of Decision

The District Disability Committee shall notify the parties of its decision in writing, and the Chair shall certify its finding to BODA. Upon receipt of a certification from the District Disability Committee that an attorney is suffering from a disability, BODA shall immediately enter an order of indefinite suspension pursuant to TRDP 12.04 without further proceedings.

Rule 8.09 Confidentiality

All proceedings before the District Disability Committee are ~~not open~~ **closed** to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure, except **as allowed by the TRDP or as may be required should there be in the event of an appeal to the Supreme Court by either the CDC or the Respondent.**

SECTION 9: 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 the Board of Disciplinary Appeals to have the suspension terminated and to be reinstated to the practice of law. All such petitions shall be filed with the BODA clerk. The Petitioner shall also serve a copy of the petition on the Chief Disciplinary Counsel as set forth in TRCP 12.06. After the petition is filed, the TRCP shall apply except when in conflict with these rules. Service shall be in accordance with Rule 1.07 above.

(b) The petition shall set forth the information required by the 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 shall 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 are not confidential; however, BODA may seal any part of or all of the record of the proceeding.

Rule 9.02 Discovery

The parties shall have sixty (60) days from the date of the filing of the petition for reinstatement in which to conduct discovery. The matter shall be set for a hearing by the BODA clerk on the next available hearing date after the expiration of the sixty (60) days, and the clerk shall so notify the parties of the time and place of the hearing. Nothing contained herein shall preclude either party from requesting a continuance for good cause.

Rule 9.03 Physical or Mental Examinations

(a) BODA may order the Petitioner seeking reinstatement to submit to a physical and/or mental examination by a qualified health care or mental health care professional upon written motion of the CDC. The Petitioner shall be served with a copy of the motion and given at least seven (7) days to respond. BODA may grant or deny the motion with or without a hearing.

(b) The Petitioner shall be given reasonable notice of the examination by written order specifying the time, place, manner, scope, and name of the person conducting the examination.

(c) The examining professional shall deliver to BODA and the parties a copy of a detailed written report setting out findings, including results of all tests made, diagnoses and conclusions, together with like reports of any previous examinations he or she has made for the same condition.

(d) If the Petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

Rule 9.04 Hearing

All reinstatement hearings before BODA shall be conducted by BODA sitting without a jury. All questions of law and fact shall be determined by BODA.

Rule 9.05 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 such other orders as protecting the public and the Petitioner's potential clients may require.

Rule 9.06 Appeals

BODA judgments on reinstatement may be appealed to the Supreme Court by filing a notice of appeal with the clerk of the Court within fourteen (14) days after the receipt of the final determination of BODA.

SECTION 10: POLIGIES AND PROGEDURES FOR APPEALS FROM DETERMINATIONS- BODA OF THE BOARD OF DISCIPLINARY APPEALS TO THE SUPREME COURT

Rule 10.01 Docketing by the Clerk

(a) All appeals to the Supreme Court from determinations by BODA on a decision of a District Grievance Committee's evidentiary panel concerning the imposition or failure to impose sanctions, appeals from determinations ~~of the Board~~ on compulsory discipline, ~~appeals from determinations of the Board on~~ reciprocal discipline, **revocations of probation**, and ~~appeals from determinations of the Board on~~ disability suspensions will be docketed by the Clerk of the Supreme Court in the same manner as applications for writ of error.

(b) No fee shall be charged by the Clerk for filing any appeal from ~~the BODA decisions of the Board of Disciplinary Appeals.~~

(c) The notice of appeal must be filed directly with the Clerk of the Supreme Court within fourteen (14) days after receipt of notice of a final determination by BODA. The record must be filed

within sixty (60) days after BODA's determination. The appealing party's brief is due thirty (30) days after the record, and the responding party's brief must be filed within twenty-five (25) days thereafter.

Rule 10.02 Appellate Rules to Apply

(a) The TRAP will apply to these appeals to the extent they are relevant. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. ~~The Court may affirm a decision of the Board of Disciplinary Appeals without written opinion.~~ The Court's decisions on sanctions, compulsory discipline, reciprocal discipline, **revocations of probation**, and disability suspension cases will be announced on the Court's Orders. Following review by the Court, these appeals will be available for public inspection in the office of the Clerk of the Supreme Court, unless the file or some portion thereof is confidential under the TRDP.

(b) The Court may affirm a decision of BODA by order without written opinion.

~~B1. — Appeals from decisions of the Board of Disciplinary Appeals on the classification of the writing filed by a Complainant as a "Complaint" or an "Inquiry" shall be docketed by the Clerk in a separate docket, to be called the Classification Docket.~~

~~B2. — Decisions of the Court on Classification appeals will be announced by letter to the appealing party, with copies to the appellee, the Board of Disciplinary Appeals and the General Counsel of the State Bar of Texas.~~