TEXAS RULES OF DISCIPLINARY PROCEDURE

(Including Amendments Effective January 15, 2014)

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TEXAS RULES OF DISCIPLINARY PROCEDURE

Preamble

The Supreme Court of Texas has the constitutional and statutory responsibility within the State for the lawyer discipline and disability system, and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability in a manner that does not discriminate by race, creed, color, sex, or national origin. To carry out this responsibility, the Court promulgates the following rules for lawyer discipline and disability proceedings. Subject to the inherent power of the Supreme Court of Texas, the responsibility for administering and supervising lawyer discipline and disability is delegated to the Board of Directors of the State Bar of Texas. Authority to adopt rules of procedure and administration not inconsistent with these rules is vested in the Board. This delegation is specifically limited to the rights, powers, and authority herein expressly delegated.

PART I. GENERAL RULES

1.01. Citation: These rules are to be called the Texas Rules of Disciplinary Procedure and shall be cited as such.

1.02. Objective of the Rules: These rules establish the procedures to be used in the professional disciplinary and disability system for attorneys in the State of Texas.

1.03. Construction of the Rules: These rules are to be broadly construed to ensure the operation, effectiveness, integrity, and continuation of the professional disciplinary and disability system. The following rules apply in the construction of these rules:

A. If any portion of these rules is held unconstitutional by any court, that determination does not affect the validity of the remaining rules.

B. The use of the singular includes the plural, and vice versa.

C. In computing any period of time prescribed or allowed by these rules, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

1.04. Integration and Concurrent Application of the Rules: These rules apply prospectively to all attorney professional disciplinary and disability proceedings commenced on and after the effective date as set forth in the Supreme Court's Order of promulgation. All disciplinary and disability proceedings commenced prior to the effective date of these rules as amended are governed by the Texas Rules of Disciplinary Procedure in effect as of the date of commencement of said disciplinary and disability proceedings.

1.05. Texas Disciplinary Rules of Professional Conduct: Nothing in these rules is to be construed, explicitly or implicitly, to amend or repeal in any way the Texas Disciplinary Rules of Professional Conduct.

1.06. Definitions:

A. "Address" means the registered address provided by the attorney who is the subject of the Grievance, as that address is shown on the membership rolls maintained by the State Bar on behalf of the Clerk of the Supreme Court at the time of receipt of the Grievance by the Chief Disciplinary Counsel.

B. "Board" means the Board of Directors of the State Bar of Texas.

C. "Chief Disciplinary Counsel" means the person serving as Chief Disciplinary Counsel and any and all of his or her assistants.

D. "Commission" means the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.

E. "Committee" means any of the grievance committees within a single District.

F. "Complainant" means the person, firm, corporation, or other entity, including the Chief Disciplinary Counsel, initiating a Complaint or Inquiry.

G. "Complaint" means those written matters received by the Office of the Chief Disciplinary Counsel that, either on the face thereof or upon screening or preliminary investigation, allege Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct.

H. "Director" means a member of the Board of Directors of the State Bar of Texas.

I. "Disability" means any physical, mental, or emotional condition that, with or without a substantive rule violation, results in the attorney's inability to practice law, provide client services, complete contracts of employment, or otherwise carry out his or her professional responsibilities to clients, courts, the profession, or the public.

J. "Disciplinary Action" means a proceeding brought by or against an attorney in a district court or any judicial proceeding covered by these rules other than an Evidentiary Hearing.

K. "Disciplinary Petition" means a pleading that satisfies the requirements of Rule 3.01.

L. "Disciplinary Proceedings" includes the processing of a Grievance, the

investigation and processing of an Inquiry or Complaint, presentation of a Complaint before a Summary Disposition Panel, and the proceeding before an Evidentiary Panel.

M. "District" means disciplinary district.

N. "Evidentiary Hearing" means an adjudicatory proceeding before a panel of a grievance committee.

O. "Evidentiary Panel" means a panel of the District Grievance Committee performing an adjudicatory function other than that of a Summary Disposition Panel with regard to a Disciplinary Proceeding pending before the District Grievance Committee of which the Evidentiary Panel is a subcommittee.

P. "Evidentiary Petition" means a pleading that satisfies the requirements of Rule 2.17.

Q. "General Counsel" means the General Counsel of the State Bar of Texas and any and all of his or her assistants.

R. "Grievance" means a written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of the Chief Disciplinary Counsel.

S. "Inquiry" means any written matter concerning attorney conduct received by the Office of the Chief Disciplinary Counsel that, even if true, does not allege Professional Misconduct or Disability.

T. "Intentional Crime" means (1) any Serious Crime that requires proof of knowledge or intent as an essential element or (2) any crime involving misapplication of money or other property held as a fiduciary.

U. "Just Cause" means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas or probation.

V. "Penal Institution" has the meaning assigned by Article 62.001, Code of Criminal Procedure.

W. "Professional Misconduct" includes:

1. Acts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct.

2. Attorney conduct that occurs in another state or in the District of Columbia and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.

3. Violation of any disciplinary or disability order or judgment.

4. Engaging in conduct that constitutes barratry as defined by the law of this state.

5. Failure to comply with Rule 13.01 of these rules relating to notification of an attorney's cessation of practice.

6. Engaging in the practice of law either during a period of suspension or when on inactive status.

7. Conviction of a Serious Crime, or being placed on probation for a Serious Crime with or without an adjudication of guilt.

8. Conviction of an Intentional Crime, or being placed on probation for an Intentional Crime with or without an adjudication of guilt.

X. "Reasonable Attorneys' Fees," for purposes of these rules only, means a reasonable fee for a competent private attorney, under the circumstances. Relevant factors that may be considered in determining the reasonableness of a fee include but are not limited to the following:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

2. The fee customarily charged in the locality for similar legal services;

3. The amount involved and the results obtained;

4. The time limitations imposed by the circumstances; and

5. The experience, reputation, and ability of the lawyer or lawyers performing the services.

Y. "Respondent" means any attorney who is the subject of a Grievance, Complaint, Disciplinary Proceeding, or Disciplinary Action.

Z. "Sanction" means any of the following:

1. Disbarment.

2. Resignation in lieu of discipline.

3. Indefinite Disability suspension.

4. Suspension for a term certain.

5. Probation of suspension, which probation may be concurrent with the period of suspension, upon such reasonable terms as are appropriate under the circumstances.

6. Interim suspension.

7. Public reprimand.

8. Private reprimand.

The term "Sanction" may include the following additional ancillary requirements.

a. Restitution (which may include repayment to the Client Security Fund of the State Bar of any payments made by reason of Respondent's Professional Misconduct); and

b. Payment of Reasonable Attorneys' Fees and all direct expenses associated with the proceedings.

AA. "Serious Crime" means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

BB. "State Bar" means the State Bar of Texas.

CC. "Summary Disposition Panel" means a panel of the Committee that determines whether a Complaint should proceed or should be dismissed based upon the absence of evidence to support a finding of Just Cause after a reasonable investigation by the Chief Disciplinary Counsel of the allegations in the Grievance.

DD. "Wrongfully Imprisoned Person" has the meaning assigned by Section 501.101, Government Code.

PART II. THE DISTRICT GRIEVANCE COMMITTEES

2.01. Disciplinary Districts and Grievance Committee Subdistricts: The State of Texas is geographically divided into disciplinary districts that are coextensive with the districts of elected Directors of the State Bar. One or more Committee subdistricts shall be delineated by the Board within each such District. From time to time, if the Commission deems it useful for the

efficient operation of the disciplinary system, it shall recommend to the Board that a redelineation be made of one or more subdistricts within a District. All Committees within a single disciplinary district have concurrent authority within the District but once a matter has been assigned to a Committee, that Committee has dominant jurisdiction, absent a transfer.

2.02. Composition of Members: Each elected Director of the State Bar shall nominate, and the President of the State Bar shall appoint, the members of the Committees within the District that coincides with the Director's district, according to rules and policies adopted from time to time by the Board. Each Committee must consist of no fewer than nine members, two-thirds of whom must be attorneys licensed to practice law in the State of Texas and in good standing, and one-third of whom must be public members. All Committee panels must be composed of two-thirds attorneys and one-third public members. Each member of the Committee shall reside within or maintain his or her principal place of employment or practice within the District for which appointed. Public members may not have, other than as consumers, any financial interest, direct or indirect, in the practice of law. There may be no ex officio members of any Committee.

2.03. Time for Appointment and Terms: All persons serving on a Committee at the time these rules become effective shall continue to serve for their then unexpired terms, subject to resignation or removal as herein provided. Nominations to Committees shall be made annually at the spring meeting of the Board; all appointments shall be made by the President no later than June 1 of each year, provided, however, that if a vacancy on a Committee arises after June 1, the Director(s) shall nominate and the President shall appoint an eligible person to serve for the remaining period of the unexpired term. If any Director fails or refuses to make nominations in a timely manner, or the President fails or refuses to make appointments in a timely manner, the existing members of the Committees shall continue to hold office until the nominations and appointments are made and the successor member is qualified. One-third of each new Committee will be appointed for initial terms of one year, one-third for an initial term of two years, and one-third for an initial term of three years. Thereafter, all terms will be for a period of three years, except for appointments to fill unexpired terms, which will be for the remaining period of the unexpired term. Any member of a Committee who has served two consecutive terms, whether full or partial terms, is not eligible for reappointment until at least three years have passed since his or her last prior service. No member may serve as chair for more than two consecutive terms of one year each. All members are eligible for election to the position of chair.

2.04. Organizational Meeting of Grievance Committees: The last duly elected chair of a Committee shall call an organizational meeting of the Committee no later than July 15 of each year; shall administer the oath of office to each new member; and shall preside until the Committee has elected, by a majority vote, its new chair. Members may vote for themselves for the position of chair.

2.05. Oath of Committee Members: As soon as possible after appointment, each newly appointed member of a Committee shall take the following oath to be administered by any person authorized by law to administer oaths:

"I do solemnly swear (or affirm) that I will faithfully execute my duties as a member of the District grievance committee, as required by the Texas Rules of Disciplinary Procedure, and will, to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of the State of Texas. I further solemnly swear (or affirm) that I will keep secret all such matters and things as shall come to my knowledge as a member of the grievance committee arising from or in connection with each Disciplinary Action and Disciplinary Proceeding, unless permitted to disclose the same in accordance with the Rules of Disciplinary Procedure, or unless ordered to do so in the course of a judicial proceeding or a proceeding before the Board of Disciplinary Appeals. I further solemnly swear (or affirm) that I have neither directly nor indirectly paid, offered, or promised to pay, contributed any money or valuable thing, or promised any public or private office to secure my appointment. So help me God."

2.06. Assignment of Committee Members: Each member of a Committee shall act through panels assigned by the chair of the Committee for summary disposition dockets and evidentiary hearings. Promptly after assignment, notice must be provided to the Respondent by United States certified mail, return receipt requested, of the names and addresses of the panel members assigned to each Complaint. A member is disqualified or is subject to recusal as a panel member for an evidentiary hearing if a district judge would, under similar circumstances, be disqualified or recused. If a member is disqualified or recused, another member shall be appointed by the Committee chair. No peremptory challenges of a Committee member are allowed. Any alleged grounds for disqualification or recusal of a panel member are conclusively waived if not brought to the attention of the panel within ten days after receipt of notification of the names and addresses of members of the panel; however, grounds for disqualification or recusal not reasonably discoverable within the ten day period may be asserted within ten days after they were discovered or in the exercise of reasonable diligence should have been discovered.

2.07. Duties of Committees: Committees shall act through panels, as assigned by the Committee chairs, to conduct summary disposition dockets and evidentiary hearings. No panel may consist of more than one-half of all members of the Committee or fewer than three members. If a member of a panel is disqualified, recused or otherwise unable to serve, the chair shall appoint a replacement. Panels must be composed of two attorney members for each public member. A quorum must include at least one public member for every two attorney members present and consists of a majority of the membership of the panel, and business shall be conducted upon majority vote of those members present, a quorum being had. In matters in which evidence is taken, no member may vote unless that member has heard or reviewed all the evidence. It shall be conclusively presumed, however, not subject to discovery or challenge in any subsequent proceeding, that every member casting a vote has heard or reviewed all the evidence. No member, attorney or public, may be appointed by the chair for both the Summary Disposition docket and the Evidentiary Panel pertaining to the same disciplinary matter. Any tie vote is a vote in favor of the position of the Respondent.

2.08. Expenses: Members of Committees serve without compensation but are entitled to

reimbursement by the State Bar for their reasonable, actual, and necessary expenses.

2.09. Notice to Parties:

A. Every notice required by this Part to be served upon the Respondent may be served by U. S. certified mail, return receipt requested, or by any other means of service permitted by the Texas Rules of Civil Procedure to the Respondent at the Respondent's Address or to the Respondent's counsel.

B. Every notice required by this Part to be served upon the Commission may be served by U. S. certified mail, return receipt requested, or by any other means of service permitted by the Texas Rules of Civil Procedure, to the address of the Commission's counsel of record or, if none, to the address designated by the Commission.

C. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail or telephonic document transfer, three days shall be added to the prescribed period.

2.10. Classification of Inquiries and Complaints: The Chief Disciplinary Counsel shall within thirty days examine each Grievance received to determine whether it constitutes an Inquiry or a Complaint. If the Grievance is determined to constitute an Inquiry, the Chief Disciplinary Counsel shall notify the Complainant and Respondent of the dismissal. The Complainant may, within thirty days from notification of the dismissal, appeal the determination to the Board of Disciplinary Appeals. If the Board of Disciplinary Appeals affirms the classification as an Inquiry, the Complainant will be so notified and may within twenty days amend the Grievance one time only by providing new or additional evidence. The Complainant may appeal a decision by the Chief Disciplinary Counsel to dismiss the amended Complaint as an Inquiry to the Board of Disciplinary Appeals. No further amendments or appeals will be accepted. In all instances where a Grievance is dismissed as an Inquiry other than where the attorney is deceased or is not licensed to practice law in the State of Texas, the Chief Disciplinary Counsel shall refer the Inquiry to a voluntary mediation and dispute resolution procedure. If the Grievance is determined to constitute a Complaint, the Respondent shall be provided a copy of the Complaint with notice to respond, in writing, to the allegations of the Complaint. The notice shall advise the Respondent that the Chief Disciplinary Counsel may provide appropriate information, including the Respondent's response, to law enforcement agencies as permitted by Rule 6.08. The Respondent shall deliver the response to both the Office of the Chief Disciplinary Counsel and the Complainant within thirty days after receipt of the notice.

2.11. Venue: Venue of District Grievance Committee proceedings shall be in accordance with the following:

A. Summary Disposition Panel Proceedings. Proceedings of a Summary Disposition Panel shall be conducted by a Panel for the county where the alleged Professional Misconduct occurred, in whole or in part. If the acts or omissions

complained of occurred wholly outside the State of Texas, proceedings shall be conducted by a Panel for the county of Respondent's residence and, if Respondent has no residence in Texas, by a Panel for Travis County, Texas.

B. Evidentiary Panel Proceedings. In an Evidentiary Panel proceeding, venue shall be in the county of Respondent's principal place of practice; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.

2.12. Investigation and Determination of Just Cause: No more than sixty days after the date by which the Respondent must file a written response to the Complaint as set forth in Rule 2.10, the Chief Disciplinary Counsel shall investigate the Complaint and determine whether there is Just Cause.

2.13. Summary Disposition Setting: Upon investigation, if the Chief Disciplinary Counsel determines that Just Cause does not exist to proceed on the Complaint, the Chief Disciplinary Counsel shall place the Complaint on a Summary Disposition Panel docket. At the Summary Disposition Panel docket, the Chief Disciplinary Counsel will present the Complaint together with any information, documents, evidence, and argument deemed necessary and appropriate by the Chief Disciplinary Counsel, without the presence of the Complainant or Respondent. The Summary Disposition Panel shall determine whether the Complaint should be dismissed or should proceed. If the Summary Disposition Panel dismisses the Complaint, both the Complainant and Respondent will be so notified. There is no appeal from a determination by the Summary Disposition Panel that the Complaint should be dismissed or should proceed. All Complaints presented to the Summary Disposition Panel and not dismissed shall be placed on the Hearing Docket. The fact that a Complaint was placed on the Summary Disposition Panel Docket and not dismissed is wholly inadmissible for any purpose in the instant or any subsequent Disciplinary Proceeding or Disciplinary Action. Files of dismissed Disciplinary Proceedings will be retained for one hundred eighty days, after which time the files may be destroyed. No permanent record will be kept of Complaints dismissed except to the extent necessary for statistical reporting purposes. In all instances where a Complaint is dismissed by a Summary Disposition Panel other than where the attorney is deceased or is not licensed to practice law in the State of Texas, the Chief Disciplinary Counsel shall refer the Inquiry to a voluntary mediation and dispute resolution procedure.

2.14. Proceeding Upon a Determination of Just Cause: All rights characteristically reposed in a client by the common law of this State as to every Complaint not dismissed by the Summary Disposition Panel are vested in the Commission.

A. Client of Chief Disciplinary Counsel: The Commission is the client of the Chief Disciplinary Counsel for every Complaint not dismissed by the Summary Disposition Panel.

B. Interim Suspension: In any instance in which the Chief Disciplinary Counsel

reasonably believes based upon investigation of the Complaint that the Respondent poses a substantial threat of irreparable harm to clients or prospective clients, the Chief Disciplinary Counsel may seek and obtain authority from the Commission to pursue interim suspension of the Respondent's license in accordance with Part XIV of these rules.

C. Disability: In any instance in which the Chief Disciplinary Counsel reasonably believes based upon investigation of the Complaint that the Respondent is suffering from a Disability to such an extent that either (a) the Respondent's continued practice of law poses a substantial threat of irreparable harm to client or prospective clients; or (b) the Respondent is so impaired as to be unable to meaningfully participate in the preparation of a defense, the Chief Disciplinary Counsel shall seek and obtain client authority to refer the Complaint to the Board of Disciplinary Appeals pursuant to Part XII of these rules.

D. Notification of Complaint: For each Complaint not dismissed by a Summary Disposition Panel, the Chief Disciplinary Counsel shall give the Respondent written notice of the acts and/or omissions engaged in by the Respondent and of the Texas Disciplinary Rules of Professional Conduct that the Chief Disciplinary Counsel contends are violated by the alleged acts and/or omissions. Such notice shall be given by certified mail, return receipt requested, sent to the Respondent at the Address.

2.15. Election: A Respondent given written notice of the allegations and rule violations complained of, in accordance with Rule 2.14, shall notify the Chief Disciplinary Counsel whether the Respondent seeks to have the Complaint heard in a district court of proper venue, with or without a jury, or by an Evidentiary Panel of the Committee. The election must be in writing and served upon the Chief Disciplinary Counsel no later than twenty days after the Respondent's receipt of written notification pursuant to Rule 2.14. If the Respondent timely elects to have the Complaint heard in a district court, the matter will proceed in accordance with Part III hereof. If the Respondent timely elects to have the Complaint heard by an Evidentiary Panel, the matter will proceed in accordance with Rules 2.17 and 2.18. A Respondent's failure to timely file an election shall conclusively be deemed as an affirmative election to proceed in accordance with Rules 2.17 and 2.18.

2.16. Confidentiality:

A. All members and staff of the Office of Chief Disciplinary Counsel, Board of Disciplinary Appeals, Committees, and Commission shall maintain as confidential all Disciplinary Proceedings and associated records, except that:

1. the pendency, subject matter, status of an investigation, and final disposition, if any, may be disclosed by the Office of Chief Disciplinary Counsel or Board of Disciplinary Appeals if the Respondent has waived confidentiality, the Disciplinary Proceeding is based on conviction of a serious crime, or disclosure is ordered by a court of competent jurisdiction;

2. if the Evidentiary Panel finds that professional misconduct occurred and imposes any sanction other than a private reprimand;

a. the Evidentiary Panel's final judgment is a public record from the date the judgment is signed; and

b. once all appeals, if any, have been exhausted and the judgment is final, the Office of Chief Disciplinary Counsel shall, upon request, disclose all documents, statements, and other information relating to the Disciplinary Proceeding that came to the attention of the Evidentiary Panel during the Disciplinary Proceeding;

3. the record in any appeal to the Board of Disciplinary Appeals from an Evidentiary Panel's final judgment, other than an appeal from a judgment of private reprimand, is a public record; and

4. facts and evidence that are discoverable elsewhere are not made confidential merely because they are discussed or introduced in the course of a Disciplinary Proceeding.

B. The deliberations and voting of an Evidentiary Panel are strictly confidential and not subject to discovery. No person is competent to testify as to such deliberations and voting.

C. Rule 6.08 governs the provision of confidential information to authorized agencies investigating qualifications for admission to practice, attorney discipline enforcement agencies, law enforcement agencies, the State Bar's Client Security Fund, the State Bar's Lawyer Assistance Program, the Supreme Court's Unauthorized Practice of Law Committee and its subcommittees, and the Commission on Judicial Conduct.

2.17. Evidentiary Hearings: Within fifteen days of the earlier of the date of Chief Disciplinary Counsel's receipt of Respondent's election or the day following the expiration of Respondent's right to elect, the chair of a Committee having proper venue shall appoint an Evidentiary Panel to hear the Complaint. The Evidentiary Panel may not include any person who served on a Summary Disposition Docket panel that heard the Complaint and must have at least three members but must have no more than one-half as many members as on the Committee. Each Evidentiary Panel must have a ratio of two attorney members for every public member. Proceedings before an Evidentiary Panel of the Committee include:

A. Evidentiary Petition and Service: Not more than sixty days from the earlier of receipt of Respondent's election or Respondent's deadline to elect to proceed before an Evidentiary Panel, the Chief Disciplinary Counsel shall file with the Evidentiary Panel an Evidentiary Petition in the name of the Commission. The Evidentiary Petition shall be served upon the Respondent in accordance with Rule 2.09 and must contain:

1. Notice that the action is brought by the Commission for Lawyer

Discipline, a committee of the State Bar.

2. The name of the Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas.

3. Allegations necessary to establish proper venue.

4. A description of the acts and conduct that gave rise to the alleged Professional Misconduct in detail sufficient to give fair notice to the Respondent of the claims made, which factual allegations may be grouped in one or more counts based upon one or more Complaints.

5. A listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated by the acts or conduct, or other grounds for seeking Sanctions.

6. A demand for judgment that the Respondent be disciplined as warranted by the facts and for any other appropriate relief.

7. Any other matter that is required or may be permitted by law or by these rules.

B. Answer: A responsive pleading either admitting or denying each specific allegation of Professional Misconduct must be filed by or on behalf of the Respondent no later than 5:00 p.m. on the first Monday following the expiration of twenty days after service of the Evidentiary Petition.

C. Default: A failure to file an answer within the time permitted constitutes a default, and all facts alleged in the Evidentiary Petition shall be taken as true for the purposes of the Disciplinary Proceeding. Upon a showing of default, the Evidentiary Panel shall enter an order of default with a finding of Professional Misconduct and shall conduct a hearing to determine the Sanctions to be imposed.

D. Request for Disclosure: The Commission or Respondent may obtain disclosure from the other party of the information or material listed below by serving the other party, no later than thirty days before the first setting of the hearing. The responding party must serve a written response on the requesting party within thirty days after service of the request, except that a Respondent served with a request before the answer is due need not respond until fifty days after service of the request. A party who fails to make, amend, or supplement a disclosure in a timely manner may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony of a witness (other than a named party) who was not timely identified, unless the panel finds that there was good cause for the failure to timely make, amend, or supplement the disclosure response; or the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other party. No objection or assertion of work product is permitted to a request under

this Rule. A party may request disclosure of any or all of the following:

1. The correct names of the parties to the Disciplinary Proceeding.

2. In general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial).

3. The name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the disciplinary matter.

4. For any testifying expert, the expert's name, address, and telephone number; the subject matter on which the expert will testify, and the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them.

5. Any witness statements.

E. Limited Discovery: In addition to the Request for Disclosure, the Commission and the Respondent may conduct further discovery with the following limitations:

1. All discovery must be conducted during the discovery period, which begins when the Evidentiary Petition is filed and continues until thirty days before the date set for hearing.

2. Each party may have no more than six hours in total to examine and cross-examine all witnesses in oral depositions.

3. Any party may serve on the other party no more than twenty-five written interrogatories, excluding interrogatories asking a party only to identify or authenticate specific documents. Each discrete subpart of an interrogatory is considered a separate interrogatory.

4. Any party may serve on the other party requests for production and inspection of documents and tangible things.

5. Any party may serve on the other party requests for admission.

F. Modification of Discovery Limitations: Upon a showing of reasonable need, the Evidentiary Panel chair may modify the discovery limitations set forth in Rule 2.17E. The parties may by agreement modify the discovery limitations set forth in Rule 2.17E.

G. Discovery Dispute Resolution: Except where modified by these rules, all discovery disputes shall be ruled upon by the Evidentiary Panel chair generally in accord with the Texas Rules of Civil Procedure; provided, however, that no ruling upon a discovery dispute shall be a basis for reversal solely because it fails to strictly comply

with the Texas Rules of Civil Procedure.

H. Subpoena Power: the Commission or the Respondent may compel the attendance of witnesses, including the Respondent, and the production of books, documents, papers, banking records, and other things by subpoena. The subpoena must notify the witness of the time, date, and place of appearance and must contain a description of the materials to be produced. Subpoenas must be in writing and signed and issued by the Evidentiary Panel chair. The party seeking the subpoena shall submit it in a proper form and is responsible for securing service. Any contest between the Commission and the Respondent about the materiality of the testimony or production sought by a subpoena shall be determined by the Evidentiary Panel chair, and is subject to review. Subpoenas must be served on witnesses personally or in accordance with Rule 21a of the Texas Rules of Civil Procedure. Proof of service shall be by certification of the server or by the return receipt. The subpoena is enforceable by the district court of the county in which the attendance or production is required. Witnesses shall be paid witness fees and mileage the same as for a district court.

I. Enforcement of Subpoenas and Examination Before a District Judge: If any witness, including the Respondent, fails or refuses to appear or to produce the things named in the subpoena, or refuses to be sworn or to affirm or to testify, the witness may be compelled to appear and produce tangible evidence and to testify at a hearing before a district judge of the county in which the subpoena was served. The application for such a hearing is to be styled "In re: Hearing Before The District _____ Grievance Committee." The court shall order a time, date, and place for the hearing and shall notify the Commission, the Respondent, and the witness. Unless the Respondent requests a public hearing, the proceedings before the court shall be closed and all records relating to the hearing shall be sealed and made available only to the Commission, the Respondent, or the witness. If the witness fails or refuses to appear, testify, or produce such tangible evidence, he or she shall be punished for civil contempt.

J. Right to Counsel: The Respondent and the Complainant may, if they so choose, have counsel present during any evidentiary hearing.

K. Alternative Dispute Resolution: Upon motion made or otherwise, the Evidentiary Panel Chair may order the Commission and the Respondent to participate in mandatory alternative dispute resolution as provided by Chapter 154 of the Civil Practice and Remedies Code or as otherwise provided by law when deemed appropriate.

L. Evidence: The Respondent, individually or through his or her counsel if represented, and the Commission, through the Chief Disciplinary Counsel, may, if they so choose, offer evidence, examine witnesses and present argument. Witness examination may be conducted only by the Commission, the Respondent, and the panel members. The inability or failure to exercise this opportunity does not abate or preclude further proceedings. The Evidentiary Panel chair 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 Texas Rules of Evidence; provided, however, that admission or exclusion of evidence shall be in the discretion of the Evidentiary Panel chair and no ruling upon the evidence shall be a basis for reversal solely because it fails to strictly comply with the Texas Rules of Evidence.

M. Burden of Proof: The burden of proof is upon the Commission for Lawyer Discipline to prove the material allegations of the Evidentiary Petition by a preponderance of the evidence.

N. Record of the Hearing: A verbatim record of the proceedings will be made by a certified shorthand reporter in a manner prescribed by the Board of Disciplinary Appeals. In the event of an appeal from the Evidentiary Panel to the Board of Disciplinary Appeals, the party initiating the appeal shall pay the costs of preparation of the transcript. Such costs shall be taxed at the conclusion of the appeal by the Board of Disciplinary Appeals.

O. Setting: Evidentiary Panel proceedings must be set for hearing with a minimum of forty-five days' notice to all parties unless waived by all parties. Evidentiary Panel proceedings shall be set for hearing on the merits on a date not later than 180 days after the date the answer is filed, except for good cause shown. If the Respondent fails to answer, a hearing for default may be set at any time not less than ten days after the answer date without further notice to the Respondent. No continuance may be granted unless required by the interests of justice.

P. Decision: After conducting the Evidentiary Hearing, the Evidentiary Panel shall issue a judgment within thirty days. In any Evidentiary Panel proceeding where Professional Misconduct is found to have occurred, such judgment shall include findings of fact, conclusions of law and the Sanctions to be imposed. The Evidentiary Panel may:

1. dismiss the Disciplinary Proceeding and refer it to the voluntary mediation and dispute resolution procedure;

2. find that the Respondent suffers from a disability and forward that finding to the Board of Disciplinary Appeals for referral to a district disability committee pursuant to Part XII; or

3. find that Professional Misconduct occurred and impose Sanctions.

2.18. <u>Imposition of Sanctions</u>: The Evidentiary Panel may, in its discretion, conduct a separate hearing and receive evidence as to the appropriate Sanctions to be imposed. Indefinite Disability sanction is not an available Sanction in a hearing before an Evidentiary Panel. In determining the appropriate Sanctions, the Evidentiary Panel shall consider:

A. The nature and degree of the Professional Misconduct for which the

Respondent is being sanctioned;

B. The seriousness of and circumstances surrounding the Professional Misconduct;

C. The loss or damage to clients;

D. The damage to the profession;

E. The assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found;

F. The profit to the attorney;

G. The avoidance of repetition;

H. The deterrent effect on others;

I. The maintenance of respect for the legal profession;

J. The conduct of the Respondent during the course of the Disciplinary Proceeding;

In addition, the Respondent's disciplinary record, including any private reprimands, is admissible on the appropriate Sanction to be imposed. Respondent's Disability may not be considered in mitigation, unless Respondent demonstrates that he or she is successfully pursuing in good faith a program of recovery or appropriate course of treatment.

2.19. Terms of Judgment: In any judgment of disbarment or suspension that is not stayed, the Evidentiary Panel shall order the Respondent to surrender his or her law license and permanent State Bar card to the Chief Disciplinary Counsel for transmittal to the Clerk of the Supreme Court. In all judgments imposing disbarment or suspension, the Evidentiary Panel shall enjoin the Respondent from practicing law or from holding himself or herself out as an attorney eligible to practice law during the period of disbarment or suspension. In all judgments of disbarment, suspension, or reprimand, the Evidentiary Panel shall make all other orders as it finds appropriate, including probation of all or any portion of suspension.

2.20. Restitution: In all cases in which the proof establishes that the Respondent's misconduct involved the misappropriation of funds and the Respondent is disbarred or suspended, the panel's judgment must require the Respondent to make restitution during the period of suspension, or before any consideration of reinstatement from disbarment, and must further provide that its judgment of suspension shall remain in effect until evidence of satisfactory restitution is made by Respondent and verified by the Chief Disciplinary Counsel.

2.21. Notice of Decision: The Complainant, the Respondent, and the Commission must be notified in writing of the judgment of the Evidentiary Panel. The notice sent to the Respondent and the Commission must clearly state that any appeal of the judgment must be filed with the

Board of Disciplinary Appeals within thirty days of the date of the notice. If the Evidentiary Panel finds that the Respondent committed professional misconduct, a copy of the Evidentiary Petition and the judgment shall be transmitted by the Office of the Chief Disciplinary Counsel to the Clerk of the Supreme Court. The Clerk of the Supreme Court shall make an appropriate notation on the Respondent's permanent record.

2.22. Post Judgment Motions: Any motion for new hearing or motion to modify the judgment must comport with the provisions of the applicable Texas Rules of Civil Procedure pertaining to motions for new trial or to motions to modify judgments.

2.23. Probated Suspension–Revocation Procedure: If all or any part of a suspension from the practice of law is probated under this Part II, the Board of Disciplinary Appeals is hereby granted jurisdiction for the full term of suspension, including any probationary period, to hear a motion to revoke probation. If the Chief Disciplinary Counsel files a motion to revoke probation, it shall be set for hearing within thirty days of service of the motion upon the Respondent. Service upon the Respondent shall be sufficient if made in accordance with Rule 21a of the Texas Rules of Civil Procedure. Upon proof, by a preponderance of the evidence, of a violation of probation, the same shall be revoked and the attorney suspended from the practice of law for the full term of suspension without credit for any probationary time served. The Board of Disciplinary Appeals' Order revoking a probated suspension cannot be superseded or stayed.

2.24. Appeals by Respondent or Commission: The Respondent or Commission may appeal the judgment to the Board of Disciplinary Appeals. Such appeals must be on the record, determined under the standard of substantial evidence. Briefs may be filed as a matter of right. The time deadlines for such briefs shall be promulgated by the Board of Disciplinary Appeals. An appeal, if taken, is perfected when a written notice of appeal is filed with the Board of Disciplinary Appeals. The notice of appeal must reflect the intention of the Respondent or the Commission to appeal and identify the decision from which appeal is perfected. The notice of appeal must be filed within thirty days after the date of judgment, except that the notice of appeal must be filed within ninety days after the date of judgment if any party timely files a motion for new trial or a motion to modify the judgment.

2.25. No Supersedeas: An Evidentiary Panel's order of disbarment cannot be superseded or stayed. The Respondent may within thirty days from entry of judgment petition the Evidentiary Panel to stay a judgment of suspension. The Respondent carries the burden of proof by preponderance of the evidence to establish by competent evidence that the Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public. An order of suspension must be stayed during the pendency of any appeals therefrom if the Evidentiary Panel finds that the Respondent has met that burden of proof. An Evidentiary Panel may condition its stay upon reasonable terms, which may include, but are not limited to, the cessation of any practice found to constitute Professional Misconduct, or it may impose a requirement of an affirmative act such as an audit of a Respondent's client trust account.

2.26. Disposition on Appeal: The Board of Disciplinary Appeals may, in any appeal of the

judgment of an Evidentiary Panel within its jurisdiction:

A. Affirm the decision of the Evidentiary Panel, in whole or in part;

B. Modify the Evidentiary Panel's judgment and affirm it as modified;

C. Reverse the decision of the Evidentiary Panel, in whole or in part, and render the judgment that the Evidentiary Panel should have rendered;

D. Reverse the Evidentiary Panel's judgment and remand the Disciplinary Proceeding for further proceeding by either the Evidentiary Panel or a statewide grievance committee panel composed of members selected from state bar districts other than the district from which the appeal was taken;

E. Vacate the Evidentiary Panel's judgment and dismiss the case; or

F. Dismiss the appeal.

2.27. Remand to Statewide Grievance Committee Panel: In determining whether a remand is heard by a statewide grievance committee panel, the Board of Disciplinary Appeals must find that good cause was shown in the record on appeal. The Board of Disciplinary Appeals shall randomly select the members of the statewide grievance committee panel from grievance committees other than the district from which the appeal was taken. Six such members shall be selected, four of whom are attorneys and two of whom are public members. The statewide grievance committee panel, once selected, shall have all duties and responsibilities of the Evidentiary Panel for purposes of the remand.

2.28. Appeal to Supreme Court of Texas: An appeal from the decision of the Board of Disciplinary Appeals on an Evidentiary Proceeding is to the Supreme Court of Texas in accordance with Rule 7.11.

PART III. TRIAL IN DISTRICT COURT

3.01. Disciplinary Petition: If the Respondent timely elects to have the Complaint heard by a district court, with or without a jury, in accordance with Rule 2.15, the Chief Disciplinary Counsel shall, not more than sixty days after receipt of Respondent's election to proceed in district court, notify the Supreme Court of Texas of the Respondent's election by transmitting a copy of the Disciplinary Petition in the name of the Commission to the Clerk of the Supreme Court of Texas. The petition must contain:

A. Notice that the action is brought by the Commission for Lawyer Discipline, a committee of the State Bar.

B. The name of the Respondent and the fact that he or she is an attorney licensed to practice law in the State of Texas.

C. Allegations necessary to establish proper venue.

D. A description of the acts and conduct that gave rise to the alleged Professional Misconduct in detail sufficient to give fair notice to Respondent of the claims made, which factual allegations may be grouped in one or more counts based upon one or more Complaints.

E. A listing of the specific rules of the Texas Disciplinary Rules of Professional Conduct allegedly violated by the acts or conduct, or other grounds for seeking Sanctions.

F. A demand for judgment that the Respondent be disciplined as warranted by the facts and for any other appropriate relief.

G. Any other matter that is required or may be permitted by law or by these rules.

3.02. **Assignment of Judge:** Upon receipt of a Disciplinary Petition, the Clerk of the Supreme Court of Texas shall promptly bring the Petition to the attention of the Supreme Court. The Supreme Court shall promptly appoint an active district judge who does not reside in the Administrative Judicial District in which the Respondent resides to preside in the case and the Clerk of the Supreme Court shall transmit a copy of the Supreme Court's appointing order to the Chief Disciplinary Counsel. Should the judge so appointed be unable to fulfill the appointment, he or she shall immediately notify the Clerk of the Supreme Court, and the Supreme Court shall appoint a replacement judge. The judge appointed shall be subject to objection, recusal or disqualification as provided by law. The objection, motion seeking recusal or motion to disqualify must be filed by either party not later than sixty days from the date the Respondent is served with the Supreme Court's order appointing the judge. In the event of objection, recusal or disqualification, the Supreme Court shall appoint a replacement judge within thirty days.

3.03. **Filing, Service and Venue:** After the trial judge has been appointed, the Chief Disciplinary Counsel shall promptly file the Disciplinary Petition and a copy of the Supreme Court's appointing Order with the district clerk of the county of alleged venue. The Respondent shall then be served as in civil cases generally with a copy of the Disciplinary Petition and a copy of the Supreme Court's appointing Order. In a Disciplinary Action, venue shall be in the county of Respondent's principal place of practice; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.

3.04. **Answer of the Respondent:** The answer of the Respondent must follow the form of answers in civil cases generally and must be filed no later than 10:00 a.m. on the first Monday following the expiration of twenty days after service upon the Respondent.

3.05. **Discovery:** Discovery is to be conducted as in civil cases generally, except that the

following matters are not discoverable:

A. The discussions, thought processes, and individual votes of the members of a Summary Disposition Panel.

B. The thought processes of the Chief Disciplinary Counsel.

C. Any communication to or from the Chief Disciplinary Counsel that would be privileged in the case of a private attorney representing a private litigant.

3.06. **Trial by Jury:** In a Disciplinary Action, either the Respondent or the Commission shall have the right to a jury trial upon timely payment of the required fee and compliance with the provisions of Rule 216, Texas Rules of Civil Procedure. The Complainant has no right to demand a jury trial.

3.07. **Trial Setting:** Disciplinary Actions shall be set for trial on a date not later than 180 days after the date the answer is filed, except for good cause shown. If the Respondent fails to answer, a default may be taken at any time appropriate under the Texas Rules of Civil Procedure. No motion for continuance, resetting, or agreed pass may be granted unless required by the interests of justice.

3.08. **Additional Rules of Procedure in the Trial of Disciplinary Actions:** In all Disciplinary Actions brought under this part, the following additional rules apply:

A. Disciplinary Actions are civil in nature.

B. Except as varied by these rules, the Texas Rules of Civil Procedure apply.

C. Disciplinary Actions must be proved by a preponderance of the evidence.

D. The burden of proof in a Disciplinary Action seeking Sanction is on the Commission. The burden of proof in reinstatement cases is upon the applicant.

E. The parties to a Disciplinary Action may not seek abatement or delay of trial because of substantial similarity to the material allegations in any other pending civil or criminal case.

F. The unwillingness or neglect of a Complainant to assist in the prosecution of a Disciplinary Action, or a compromise and settlement between the Complainant and the Respondent, does not alone justify the abatement or dismissal of the action.

G. It shall be the policy of the Commission to participate in alternative dispute resolution procedures where feasible; provided, however, that Disciplinary Actions shall be exempt from any requirements of mandatory alternative dispute resolution procedures as provided by Chapter 154 of the Civil Practice and Remedies Code or as otherwise provided by law.

3.09. **Judgment:** If the trial court fails to find from the evidence in a case tried without a jury, or from the verdict in a jury trial, that the Respondent's conduct constitutes Professional Misconduct, the court shall render judgment accordingly. If the court finds that the Respondent's conduct does constitute Professional Misconduct, the court shall determine the appropriate Sanction or Sanctions to be imposed. If the court finds that the Respondent committed an act or acts of Professional Misconduct, the court shall direct transmittal of certified copies of the judgment and all trial pleadings to the Clerk of the Supreme Court. The Clerk of the Supreme Court shall make an appropriate notation on the Respondent's permanent record. The trial court shall promptly enter judgment after the close of evidence (in the case of a nonjury trial) or after the return of the jury's verdict. Mandamus lies in the Supreme Court of Texas to enforce this provision, upon the petition of either the Respondent or the Chief Disciplinary Counsel.

3.10. **Imposition of Sanctions:** The trial court may, in its discretion, conduct a separate hearing and receive evidence as to the appropriate Sanctions to be imposed. Private reprimand is not an available Sanction. Indefinite Disability suspension is not an available Sanction. In determining the appropriate Sanctions, the court shall consider:

A. The nature and degree of the Professional Misconduct for which the Respondent is being sanctioned;

B. The seriousness of and circumstances surrounding the Professional Misconduct;

C. The loss or damage to clients;

D. The damage to the profession;

E. The assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found;

F. The profit to the attorney;

G. The avoidance of repetition;

H. The deterrent effect on others;

I. The maintenance of respect for the legal profession;

J. The conduct of the Respondent during the course of the Committee action;

K. The trial of the case; and

L. Other relevant evidence concerning the Respondent's personal and professional background.

In addition, the Respondent's disciplinary record, including any private reprimands, is admissible on the appropriate Sanction to be imposed. Respondent's Disability may not be considered in mitigation, unless Respondent demonstrates that he or she is successfully pursuing in good faith a program of recovery or appropriate course of treatment.

3.11. Terms of Judgment: In any judgment of disbarment or suspension that is not stayed, the court shall order the Respondent to surrender his or her law license and permanent State Bar card to Chief Disciplinary Counsel for transmittal to the Clerk of the Supreme Court. In all judgments imposing disbarment or suspension, the court shall enjoin the Respondent from practicing law or from holding himself or herself out as an attorney eligible to practice law during the period of disbarment or suspension. In all judgments of disbarment, suspension, or reprimand, the court shall make all other orders as it finds appropriate, including probation of all or any portion of suspension. The continuing jurisdiction of the trial court to enforce a judgment does not give a trial court authority to terminate or reduce a period of active or probated suspension previously ordered.

3.12. Restitution: In all cases in which the proof establishes that the Respondent's conduct involved misapplication of funds and the judgment is one disbarring or suspending the Respondent, the judgment must require the Respondent to make restitution during the period of suspension, or before any consideration of reinstatement from disbarment, and shall further provide that a judgment of suspension shall remain in effect until proof is made of complete restitution.

3.13. Probation Suspension–Revocation Procedure: If all or any part of a suspension from the practice of law is probated under this Part III, the court retains jurisdiction during the full term of suspension, including any probationary period, to hear a motion to revoke probation. If the Chief Disciplinary Counsel files a motion to revoke probation, it shall be set for hearing before the court without the aid of a jury within thirty days of service of the motion upon the Respondent. Service upon the Respondent shall be sufficient if made in accordance with Rule 21a of the Texas Rules of Civil Procedure. Upon proof by a preponderance of the evidence of a violation of probation, the same shall be revoked and the attorney suspended from the practice of law for the full term of suspension without credit for any probationary time served.

3.14. No Supersedeas: A district court judgment of disbarment or an order revoking probation of a suspension from the practice of law cannot be superseded or stayed. The Respondent may within thirty days from entry of judgment petition the court to stay a judgment of suspension. The Respondent carries the burden of proof by preponderance of the evidence to establish by competent evidence that the Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public. A judgment of suspension shall be stayed during the pendency of any appeals therefrom if the district court finds that the Respondent has met that burden of proof. The district court may condition its stay upon reasonable terms, which may include, but are not limited to, the cessation of any practice found to constitute Professional Misconduct, or it may impose a requirement of an affirmative act such as an audit of a Respondent's client trust account. There is no interlocutory appeal from a court's stay of a suspension, with or without conditions.

3.15. Exemption from Cost and Appeal Bond: No cost or appeal bond is required of the Chief Disciplinary Counsel or the Commission. In lieu thereof, when a cost or appeal bond would be otherwise required, a memorandum setting forth the exemption under this rule, when filed, suffices as a cost or appeal bond.

3.16. Appeals: A final judgment of the district court and any order revoking or refusing to revoke probation of a suspension from the practice of law may be appealed as in civil cases generally.

PART IV. THE COMMISSION FOR LAWYER DISCIPLINE

4.01. Composition and Membership: The Commission for Lawyer Discipline is hereby created as a permanent committee of the State Bar and is not subject to dissolution by the Board under Article VIII of the State Bar Rules. The Commission must be composed of twelve members. Six members shall be attorneys licensed to practice law in the State of Texas and in good standing as members of the State Bar. Six members shall be public members who have, other than as consumers, no interest, direct or indirect, in the practice of law or the profession of law. No person may serve as a member of the Commission while he or she is a member of a Committee, an officer or Director of the State Bar, an employee of the State Bar, or an officer or director of the Texas Young Lawyers Association; provided, however, the Chairman of the Board of the State Bar shall appoint a Director of the State Bar as an adviser to the Commission and a Director of the State Bar as an alternate adviser to the Commission, and the President of the Texas Young Lawyers Association shall appoint a Director of the Texas Young Lawyers Association as an adviser to the Commission. Members of the Commission and its advisers will be compensated for their reasonable, actual, and necessary expenses, and members, but not advisers, will be compensated for their work as determined by the Board to be appropriate.

4.02. Appointment and Terms: Except for initial appointments as set forth in Rule 4.03 hereof, Commission members will serve three-year terms unless sooner terminated through disqualification, resignation, or other cause. Terms begin on September 1 of the year and expire on August 31 of the third year thereafter. The lawyer members of the Commission are appointed by the President of the State Bar, subject to the Board's concurrence, no later than June 1 of the year. The public members are appointed by the Supreme Court of Texas no later than June 1 of the year. Members may be removed by the Supreme Court, but only for good cause. Vacancies are to be filled in the same manner as term appointments but are only for the unexpired term of the position vacated. Members of the Commission are not eligible for reappointment to more than one additional three-year term.

4.03. Initial Appointments: Two lawyers shall initially be appointed for a term to expire on August 31 after at least twelve months of service; two lawyers shall initially be appointed for a term to expire on August 31 after twenty-four months of service; and two lawyers shall initially be appointed for a term to expire on August 31 after thirty-six months of service. One public member shall initially be appointed for a term to expire on August 31 after at least twelve months of service; one public member shall initially be appointed for a term to expire on August 31 after twenty-four months of service; and one public member shall initially be

appointed for a term to expire on August 31 after thirty-six months of service. After the terms provided above, all terms shall be as provided in Rule 4.02.

4.04. Oath of Committee Members: As soon as possible after appointment, each newly appointed member of the Commission for Lawyer Discipline shall take the following oath to be administered by any person authorized by law to administer oaths:

> "I do solemnly swear (or affirm) that I will faithfully execute my duties as a member of the Commission for Lawyer Discipline, as required by the Texas Rules of Disciplinary Procedure, and will, to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of the State of Texas. I further solemnly swear (or affirm) that I will keep secret all such matters and things as shall come to my knowledge as a member of the Commission for Lawyer Discipline arising from or in connection with each Disciplinary Action and Disciplinary Proceeding unless permitted to disclose the same in accordance with the Rules of Disciplinary Procedure or unless ordered to do so in the course of a judicial proceeding or a proceeding before the Board of Disciplinary Appeals. I further solemnly swear (or affirm) that I have neither directly nor indirectly paid, offered, or promised to pay, contributed any money or valuable thing, or promised any public or private office to secure my appointment. So help me God."

4.05. Chair: The President of the State Bar, subject to the concurrence of the Board, shall annually designate a lawyer member to chair the Commission and another member to serve as vice-chair, each for a one-year term.

4.06. Duties and Authority of the Commission: The Commission has the following duties and responsibilities:

A. To exercise, in lawyer disciplinary and disability proceedings only, all rights characteristically reposed in a client by the common law of this State for all Complaints not dismissed by a Summary Disposition Panel.

B. To monitor and, from time to time as appropriate, to evaluate and report to the Board on the performance of the Chief Disciplinary Counsel.

C. To retain special counsel or local counsel when necessary.

D. To recommend to the Board such educational programs on legal ethics and lawyer discipline as it may consider advisable.

E. To recommend to the Board an annual budget for the operation of the attorney professional disciplinary and disability system.

F. To meet monthly or at such other times, in such places, and for such periods of time as the business of the Commission requires.

G. To draft and recommend for adoption to the Board the Commission's internal operating rules and procedures, which rules and procedures, as adopted by the Board, will then be submitted to the Supreme Court for approval and, after approval, be published in the Texas Bar Journal.

H. To recommend to the Board the removal, for cause, of members of Committees.

I. To refer to an appropriate disability screening committee information coming to its attention indicating that an attorney is disabled physically, mentally, or emotionally, or by the use or abuse of alcohol or other drugs.

J. To report to the Board, at each regular meeting, and to the Grievance Oversight Committee, at least annually, on the state of the attorney professional disciplinary and disability system and to make recommendations and proposals to the Board on the refinement and improvement of the system.

K. To formulate and recommend to the Board for adoption a system for monitoring disabled lawyers.

L. To notify each jurisdiction in which an attorney is admitted to practice law of any Sanction imposed in this State, other than a private reprimand (which may include restitution and payment of Attorneys' Fees), and any disability suspension, resignation, and reinstatement.

M. To provide statistics and reports on lawyer discipline to the National Discipline Data Bank maintained by the American Bar Association.

N. To maintain, subject to the limitations elsewhere herein provided, permanent records of disciplinary and disability matters; and to transmit notice of all public discipline imposed against an attorney, suspensions due to Disability, and reinstatements to the National Discipline Data Bank maintained by the American Bar Association.

O. To make recommendations to the Board on the establishment and maintenance of regional offices as required for the expeditious handling of Inquiries, Complaints, and other disciplinary matters.

4.07. Meetings:

A. Seven members shall constitute a quorum of the Commission, except that a panel of three members may consider such matters as may be specifically delegated by the Chair, or, in the absence of the Chair, the Vice-Chair, of the Commission. The Commission and each of its panels may act only with the concurrence of a majority of those members present and voting.

B. In any event in which the Commission shall conduct business in a panel of three members, at least one of the members assigned to each such panel shall be a public member of the Commission.

C. The Commission may, at the instance of the Chair, or, in the absence of the Chair, at the instance of the Vice-Chair of the Commission, conduct its business by conference telephone calls. Any action taken in a telephone conference must be reduced to writing and signed by each participant certifying the accuracy of the written record of action taken.

4.08. Funding: The State Bar shall allocate sufficient funds to pay all reasonable and necessary expenses incurred in the discharge of the duties of the Commission; of the Chief Disciplinary Counsel; of the Board of Disciplinary Appeals; of Committees and their individual members; and of witnesses. Further, the State Bar shall allocate funds to pay all other reasonable and necessary expenses to administer the disciplinary and disability system effectively and efficiently.

4.09. Open Meetings and Open Records: The Commission is not a "governmental body" as that term is defined in Section 551.001(3) of V.T.C.A., Government Code, and is not subject to either the provisions of the Open Meetings Act or the Open Records Act.

PART V. CHIEF DISCIPLINARY COUNSEL

5.01. Selection: The General Counsel of the State Bar shall, subject to the provisions of this Rule, serve as the Chief Disciplinary Counsel under these rules. If the Commission determines that the General Counsel of the State Bar should no longer function as the Chief Disciplinary Counsel, then the Commission shall notify the Board of such decision and, in the next succeeding fiscal year of the State Bar, funds shall be provided to the Commission sufficient for it to select and hire a lawyer as Chief Disciplinary Counsel and sufficient deputies and assistants as may be required to operate the disciplinary and disability system effectively and efficiently. The Commission's determination must be made, if at all, and the notification herein provided must be given, if at all, during the months of January or February 1993, or during the same months of any odd numbered year thereafter. In such event, the Commission shall alone possess the right of selection, but nothing herein precludes its employment of the General Counsel or a member of the General Counsel's staff for such positions.

5.02. Duties: In addition to the other disciplinary duties set forth in these rules, the Chief Disciplinary Counsel shall:

A. Review and screen all information coming to his or her attention or to the attention of the Commission relating to lawyer misconduct. Such review may encompass whatever active investigation is deemed necessary by the Chief Disciplinary Counsel independent of the filing of a writing.

B. Reject all matters and Inquiries not constituting a Complaint and so advise the

Complainant.

C. Investigate Complaints to ascertain whether Just Cause exists.

D. Recommend dismissal of a Complaint, if appropriate, to a Summary Disposition Panel of appropriate venue.

E. Move the Board of Disciplinary Appeals to transfer a pending Disciplinary Proceeding from one Committee to another within the same District if the Committee fails or refuses to hear the Disciplinary Proceeding.

F. Move the Board of Disciplinary Appeals to transfer matters from one Committee to another, whether or not within the same District, when the requirements of fairness to the Complainant or the Respondent require.

G. Represent the Commission in all Complaints, Disciplinary Proceedings and Disciplinary Actions in which the Commission is the client.

H. When information regarding a Complaint becomes eligible for public disclosure under these rules, refer a Complaint and information related thereto to any other professional organizations or bodies that he or she deems appropriate for consultation on the nature of the Complaint, the events giving rise to the Complaint, and the proper manner of resolution of the Complaint. The Chief Disciplinary Counsel shall provide the Respondent written notice of the referral at the time it is made. Neither the Chief Disciplinary Counsel nor any person or body acting under these rules is bound by any recommendation of another professional organization to which the Complaint or related information is referred under this Rule.

I. Present cases to Evidentiary Panels of Committees, or in a district court if such has been elected by the Respondent, as provided in these rules, unless disqualified from doing so under the Texas Disciplinary Rules of Professional Conduct.

J. Represent the Commission, if the need arises, before all courts and administrative bodies.

K. Notify the Respondent and the Complainant promptly of the disposition of each Complaint.

L. Upon receiving information of a violation of any term or condition of probation by an attorney suspended from the practice of law where all or any part of the suspension has been probated, file on behalf of the Commission a motion to revoke probation. The motion must state the terms or conditions of the probation and the conduct alleged to violate the same. The Chief Disciplinary Counsel shall cause a copy of the motion to be served on the attorney involved.

M. Perform such other duties relating to disciplinary and disability matters as may

be assigned by the Commission.

5.03. Accountability: On disciplinary and disability matters, the Chief Disciplinary Counsel is accountable only to the Commission.

PART VI. PUBLIC INFORMATION AND ACCESS

6.01. Availability of Materials: The Commission shall ensure that sufficient copies of these rules, the Texas Disciplinary Rules of Professional Conduct, and forms for the filing of disciplinary Grievances are made available to the public. In addition, the Commission shall make available to the public a brochure, summarizing in plain language the disciplinary and disability system for attorneys in the State of Texas. Such brochure shall be made available in English and in Spanish.

6.02. Public and Media Inquiries: The Commission shall respond, as appropriate, to all public and media inquiries concerning the operation of the attorney professional disciplinary and disability system, but in so doing may not disclose information that is confidential or privileged. The Commission shall disclose, upon proper request, information in its custody or control that is neither confidential nor privileged. Any attorney may waive confidentiality and privilege as to his or her disciplinary record by filing an appropriate waiver on a form to be prescribed by the Commission. The Commission shall maintain complete records and files of all disciplinary and disability matters and compile reports and statistics to aid in the administration of the system.

6.03. Telephone Inquiries: The Commission shall maintain a toll-free telephone number. The toll-free number shall be publicized to ensure that all Texas residents have access to it. Telephone inquiries about specific attorney conduct will not be taken, but the Commission will send a Grievance form to any person or entity inquiring by telephone.

6.04. Abstracts of Appeals: Any Disciplinary Proceeding appealed to the Board of Disciplinary Appeals shall be abstracted by the Board of Disciplinary Appeals. A copy of the abstract shall be made available to any person or other entity upon proper request and shall be published in the Texas Bar Journal. No information that is otherwise confidential may be disclosed in an abstract under these provisions.

6.05. Report to the Clerk of the Supreme Court: The final disposition of any Disciplinary Proceeding or Disciplinary Action resulting in the imposition of a Sanction other than a private reprimand (which may include restitution and payment of attorneys' fees) shall be reported by the Commission to the Clerk of the Supreme Court of Texas.

6.06. Court and Board of Disciplinary Appeals Opinions:

A. Court Opinions: In any case arising out of a Complaint, an opinion of a court of appeals issued on or after May 1, 1992 has precedential value regardless of its designation.

B. Board of Disciplinary Appeals Opinions: Board of Disciplinary Appeals opinions are open to the public and must be made available to public reporting services, print or electronic, for publishing. These opinions are persuasive, not precedential, in disciplinary proceedings tried in district court.

Comment to 2009 change: Rule 6.06 is divided into two subdivisions. The language in subdivision A is amended to remove an outdated reference to the official reporter system and to be consistent with Texas Rule of Appellate Procedure (TRAP) 47 amendments intended to prospectively discontinue designating opinions as either "published" or "unpublished." The erroneously designated opinions addressed in subdivision A have precedential value from May 1, 1992 on because that is the effective date of the prior version of the rule, which mandated publication of "[a]ll cases involving the Professional Misconduct or Disability of an attorney appealed to the Courts of Appeal [sic] or to the Supreme Court of Texas." New subdivision B addresses Board of Disciplinary Appeals (BODA) opinions and includes a distribution provision similar to TRAP 47.3. This change provides for the publication of BODA opinions issued in any type of case, whether pursuant to BODA's original or appellate jurisdiction.

6.07. Publication of Disciplinary Results: The final disposition of all Disciplinary Proceedings and Disciplinary Actions shall be reported in the Texas Bar Journal, and shall be sent for publication to a newspaper of general circulation in the county of the disciplined attorney's residence or office. Private reprimands (which may include restitution and payment of attorneys' fees) shall be published in the Texas Bar Journal with the name of the attorney deleted. The Commission shall report all public discipline imposed against an attorney, suspensions due to Disability, and reinstatements to the National Discipline Data Bank of the American Bar Association.

6.08. Access to Confidential Information: No officer or Director of the State Bar or any appointed adviser to the Commission shall have access to any confidential information relating to any Disciplinary Proceeding, Disciplinary Action, or Disability suspension. The Office of Chief Disciplinary Counsel may provide this information to authorized agencies investigating qualifications for admission to practice, attorney discipline enforcement agencies, law enforcement agencies, the State Bar's Client Security Fund, the State Bar's Lawyer Assistance Program, the Supreme Court's Unauthorized Practice of Law Committee and its subcommittees and the Commission on Judicial Conduct.

PART VII. BOARD OF DISCIPLINARY APPEALS

7.01. Membership: The Board of Disciplinary Appeals is hereby established. Its members shall be appointed by the Supreme Court of Texas. The Board of Disciplinary Appeals shall consist of twelve lawyer members with not more than eight of such members being residents of Harris, Dallas, Tarrant, Travis, or Bexar Counties, Texas, and with no more than two members from any one county. The term of office of all members of the Board of Disciplinary Appeals shall be for three years. Members are eligible for appointment to one additional three-year term. Members appointed to fill an unexpired term shall be eligible for reappointment for two subsequent terms. Vacancies shall be filled by appointment of the Supreme Court of Texas. Each member shall continue to perform the duties of office until his or her successor is

duly qualified. No person may simultaneously be a member of the Board of Disciplinary Appeals and either the Commission, the Board, or a Committee.

7.02. Initial Appointments: Three lawyers shall initially be appointed for a term to expire on August 31 after at least twelve months of service; three lawyers shall initially be appointed for a term to expire on August 31 after twenty-four months of service; and three lawyers shall initially be appointed for a term to expire on August 31 after thirty-six months of service. After the terms provided above, all terms shall be as provided in Rule 7.01.

7.03. Election of Officers: The Board of Disciplinary Appeals shall annually elect members as chair and vice-chair. The chair, or in his or her absence the vice-chair, shall perform the duties normally associated with that office and shall preside over all en banc meetings of the Board of Disciplinary Appeals.

7.04. Oath of Committee Members: As soon as possible after appointment, each newly appointed member of the Board of Disciplinary Appeals shall take the following oath to be administered by any person authorized by law to administer oaths:

> "I do solemnly swear (or affirm) that I will faithfully execute my duties as a member of the Board of Disciplinary Appeals, as required by the Texas Rules of Disciplinary Procedure, and will, to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of the State of Texas. I further solemnly swear (or affirm) that I will keep secret all such matters and things as shall come to my knowledge as a member of the Board of Disciplinary Appeals arising from or in connection with each Disciplinary Action and Disciplinary Proceeding unless permitted to disclose the same in accordance with the Rules of Disciplinary Procedure or unless ordered to do so in the course of a judicial proceeding or a proceeding before the Board of Disciplinary Appeals. I further solemnly swear (or affirm) that I have neither directly nor indirectly paid, offered, or promised to pay, contributed any money or valuable thing, or promised any public or private office to secure my appointment. So help me God."

7.05. Quorum: Six members constitute a quorum of the Board of Disciplinary Appeals, except that a panel of three members may hear appeals and such other matters as may be specifically delegated to it by the Chair. The Board of Disciplinary Appeals and each of its panels may act only with the concurrence of a majority of those members present and voting.

7.06. Compensation and Expenses: Members of the Board of Disciplinary Appeals are entitled to reasonable compensation for their services and reimbursement for travel and other expenses incident to the performance of their duties.

7.07. Recusal and Disqualification of Members: Board of Disciplinary Appeals members shall refrain from taking part in any matter before the Board of Disciplinary Appeals [proceeding] in which recusal or disqualification would be required of a judge similarly situated.

7.08. Powers and Duties: The Board of Disciplinary Appeals shall exercise the following powers and duties:

A. Propose rules of procedure and administration for its own operation to the Supreme Court of Texas for promulgation.

B. Review the operation of the Board of Disciplinary Appeals and periodically report to the Supreme Court and to the Board.

C. Affirm or reverse a determination by the Chief Disciplinary Counsel that a statement constitutes an Inquiry as opposed to a Complaint.

D. Hear and determine appeals by the Respondent or the Commission on the record from the judgment of an Evidentiary Panel. The appellate determination must be made in writing and signed by the chair or vice-chair of the Board of Disciplinary Appeals, or other person presiding.

E. Transfer any pending Disciplinary Proceeding from one Committee to another within the same District if the one Committee fails or refuses to hear the Disciplinary Proceeding.

F. Transfer matters from one Committee to another, whether or not within the same District, when the requirements of fairness to the Complainant or the Respondent require.

G. Hear and determine actions for compulsory discipline under Part VIII.

H. Hear and determine actions for reciprocal discipline under Part IX.

I. Hear and determine actions for disability suspension under Part XII.

J. Exercise all other powers and duties provided in these rules.

7.09. Meetings: The Board of Disciplinary Appeals shall meet en banc at least once each year at the call of its chair. Its members may meet more often en banc at the call of the chair or upon the written request to the chair of at least three of the members of the Board of Disciplinary Appeals.

7.10. Conference Calls: The Board of Disciplinary Appeals may, at the instance of the chair, conduct its business by conference telephone calls. Any action taken in a telephone conference must be reduced to writing and signed by each participant certifying the accuracy of the written record of action taken.

7.11. Judicial Review: An appeal from a determination of the Board of Disciplinary Appeals shall be to the Supreme Court. Within fourteen days after receipt of notice of a final

determination by the Board of Disciplinary Appeals, the party appealing must file a notice of appeal directly with the Clerk of the Supreme Court. The record must be filed within sixty days after the Board of Disciplinary Appeals' determination. The appealing party's brief is due thirty days after the record is filed, and the responding party's brief must be filed within thirty days thereafter. Except as herein expressly provided, the appeal must be made pursuant to the then applicable Texas Rules of Appellate Procedure. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court may affirm a decision on the Board of Disciplinary Appeals by order without written opinion. Determinations by the Board of Disciplinary Appeals that a statement constitutes an Inquiry or transferring cases are conclusive, and may not be appealed to the Supreme Court.

7.12. Open Meetings and Open Records: The Board of Disciplinary Appeals is not a "governmental body" as that term is defined in Section 551.001 or Section 552.003 of V.T.C.A., Government Code, and is not subject to either the provisions of the Open Meetings Act or the Open Records Act.

PART VIII. COMPULSORY DISCIPLINE

8.01. Generally: When an attorney licensed to practice law in Texas has been convicted of an Intentional Crime or has been placed on probation for an Intentional Crime with or without an adjudication of guilt, the Chief Disciplinary Counsel shall initiate a Disciplinary Action seeking compulsory discipline pursuant to this part. The completion or termination of any term of incarceration, probation, parole, or any similar court ordered supervised period does not bar action under Part VIII of these rules as hereinafter provided. Proceedings under this part are not exclusive in that an attorney may be disciplined as a result of the underlying facts as well as being disciplined upon the conviction or probation through deferred adjudication.

8.02. Conclusive Evidence: In any Disciplinary Action brought under this part, the record of conviction or order of deferred adjudication is conclusive evidence of the attorney's guilt.

8.03. Commencement of Suit: A Disciplinary Action under this part must be initiated by the filing of a petition with the Board of Disciplinary Appeals. The petition must allege the adjudication of guilt (or probation without an adjudication of guilt) of an Intentional Crime; allege that the Respondent is the same person as the party adjudicated guilty or who received probation with or without an adjudication of guilt for such Intentional Crime; and seek the appropriate discipline.

8.04. Procedure: The Board of Disciplinary Appeals shall hear and determine all questions of law and fact. When an attorney has been convicted of an Intentional Crime or has been placed on probation for an Intentional Crime without an adjudication of guilt, he or she shall be suspended as an attorney licensed to practice law in Texas during the appeal of the conviction or the order of deferred adjudication. Upon introduction into evidence of a certified copy of the judgment of conviction or order of deferred adjudication and a certificate of the Clerk of the Supreme Court that the attorney is licensed to practice law in Texas, the Board of Disciplinary Appeals shall immediately determine whether the attorney has been convicted of an Intentional Crime or granted probation without an adjudication of guilt for an

Intentional Crime. Uncontroverted affidavits that the attorney is the same person as the person convicted or granted probation without an adjudication of guilt are competent and sufficient evidence of those facts. Nothing in these rules prohibits proof of the necessary elements in such Disciplinary Action by competent evidence in any other manner permitted by law. The Board of Disciplinary Appeals shall sit, hear and determine whether the attorney should be disciplined and enter judgment accordingly within forty-five days of the answer day; however, any failure to do so within the time limit will not affect its jurisdiction to act. Any suspension ordered during the appeal of a criminal conviction or probation without an adjudication of guilt is interlocutory and immediately terminates if the conviction or probation is set aside or reversed.

8.05. Disbarment: When an attorney has been convicted of an Intentional Crime, and that conviction has become final, or the attorney has accepted probation with or without an adjudication of guilt for an Intentional Crime, the attorney shall be disbarred unless the Board of Disciplinary Appeals, under Rule 8.06, suspends his or her license to practice law. If the attorney's license to practice law has been suspended during the appeal of the criminal conviction, the Chief Disciplinary Counsel shall file a motion for final judgment of disbarment with the Board of Disciplinary Appeals. If the motion is supported by affidavits or certified copies of court documents showing that the conviction has become final, the motion shall be granted without hearing, unless within ten days following the service of the motion pursuant to Rule 21a of the Texas Rules of Civil Procedure, upon the attorney so convicted or his or her attorney of record, the attorney so convicted files a verified denial contesting the finality of the judgment, in which event the Board of Disciplinary Appeals will immediately conduct a hearing to determine the issue. If no Disciplinary Action is pending at the time the conviction becomes final, disbarment shall be initiated by filing a Disciplinary Action.

8.06. Suspension: If an attorney's sentence upon conviction of a Serious Crime is fully probated, or if an attorney receives probation through deferred adjudication in connection with a Serious Crime, the attorney's license to practice law shall be suspended during the term of probation. If an attorney is suspended during the term of probation, the suspension shall be conditioned upon the attorney's satisfactorily completing the terms of probation. If probation is revoked, the attorney shall be disbarred. An early termination of probation does not result in reinstatement until the entire probationary period, as originally assessed, has expired.

8.07. Early Termination: An early termination of criminal probation shall have no effect on any judgment entered pursuant to Part VIII.

8.08. No Supersedeas: In compulsory discipline cases, either party shall have the right to appeal to the Supreme Court of Texas but no Respondent suspended or disbarred by the Board of Disciplinary Appeals shall be entitled to practice law in any form while the appeal is pending and shall have no right to supersede the judgment by bond or otherwise.

PART IX. RECIPROCAL DISCIPLINE

9.01. Orders From Other Jurisdictions: Upon receipt of information indicating that an attorney licensed to practice law in Texas has been disciplined in another jurisdiction, the

Chief Disciplinary Counsel shall diligently seek to obtain a certified copy of the order or judgment of discipline from the other jurisdiction, and file it with the Board of Disciplinary Appeals along with a petition requesting that the attorney be disciplined in Texas. A certified copy of the order or judgment is prima facie evidence of the matters contained therein, and a final adjudication in another jurisdiction that an attorney licensed to practice law in Texas has committed Professional Misconduct is conclusive for the purposes of a Disciplinary Action under this Part, subject to the defenses set forth in Rule 9.04 below.

9.02. Notice to the Respondent: Upon the filing of the petition, the Board of Disciplinary Appeals shall issue a notice to the attorney, containing a copy of the petition, a copy of the order or judgment from the other jurisdiction, and an order directing the attorney to show cause within thirty days from the date of the mailing of the notice why the imposition of the identical discipline in this state would be unwarranted.

9.03. Discipline to be Imposed: If the attorney fails to file his or her answer with the Board of Disciplinary Appeals within the thirty-day period provided by Rule 9.02, the Board of Disciplinary Appeals shall enter a judgment imposing discipline identical, to the extent practicable, with that imposed in the other jurisdiction. If the attorney files an answer, the Board of Disciplinary Appeals shall proceed to determine the case upon the pleadings, the evidence, and the briefs, if any.

9.04. Defenses: If the Respondent files an answer, he or she shall allege, and thereafter be required to prove, by clear and convincing evidence, to the Board of Disciplinary Appeals one or more of the following defenses to avoid the imposition of discipline identical, to the extent practicable, with that directed by the judgment of the other jurisdiction:

A. That the procedure followed in the other jurisdiction on the disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.

B. That there was such an infirmity of proof establishing the misconduct in the other jurisdiction as to give rise to the clear conviction that the Board of Disciplinary Appeals, consistent with its duty, should not accept as final the conclusion on the evidence reached in the other jurisdiction.

C. That the imposition by the Board of Disciplinary Appeals of discipline identical, to the extent practicable, with that imposed by the other jurisdiction would result in grave injustice.

D. That the misconduct established in the other jurisdiction warrants substantially different discipline in this state.

E. That the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute Professional Misconduct in this state.

If the Board of Disciplinary Appeals determines that one or more of the foregoing defenses

have been established, it shall enter such orders as it deems necessary and appropriate.

PART X. RESIGNATION IN LIEU OF DISCIPLINE

10.01. Disciplinary Resignation: Any person licensed to practice law in the State of Texas shall be permitted to file a motion for resignation in lieu of discipline, in a form promulgated by the Commission, in the Supreme Court of Texas, attaching thereto his or her Texas law license and permanent State Bar membership card.

10.02. Response of Chief Disciplinary Counsel: The Chief Disciplinary Counsel shall, within twenty days after service upon him or her of a motion for resignation in lieu of discipline, file a response on behalf of the State Bar (acting through the Commission) stating whether the acceptance of the resignation is in the best interest of the public and the profession and setting forth a detailed statement of the Professional Misconduct with which the movant is charged. The movant may, within ten days after service of such response, withdraw the motion. If a motion to withdraw is not timely filed, the detailed statement of Professional Misconduct shall be deemed to have been conclusively established for all purposes.

10.03. Effect of Filing: The filing of a motion for resignation in lieu of discipline does not, without the consent of the Chief Disciplinary Counsel, serve to delay or abate any then pending Grievance, Complaint, Disciplinary Proceeding, Disciplinary Action or disciplinary investigation.

10.04. Acceptance of Resignation and Notification: Any motion to resign in lieu of discipline under this part must be filed in the Supreme Court and is ineffective until and unless accepted by written order of the Supreme Court. The movant; the Evidentiary Panel Chair, if any; the Commission; and the Complainant, if any, shall be notified by the Chief Disciplinary Counsel of the Court's disposition of such motion.

10.05. Effect of Resignation: Any resignation under this part shall be treated as a disbarment for all purposes, including client notification, discontinuation of practice, and reinstatement.

PART XI. REINSTATEMENT AFTER DISBARMENT OR RESIGNATION

11.01. Eligibility and Venue: A disbarred person or a person who has resigned in lieu of discipline may, at any time after the expiration of five years from the date of final judgment of disbarment or the date of Supreme Court order accepting resignation in lieu of discipline, petition the district court of the county of his or her residence for reinstatement; provided, however, that no person who has been disbarred or resigned in lieu of discipline by reason of conviction of or having been placed on probation without an adjudication of guilt for an Intentional Crime or a Serious Crime, is eligible to apply for reinstatement until five years following the date of completion of sentence, including any period of probation and/or parole. If, at the time the petition for reinstatement is filed, the disbarred person or person who has resigned in lieu of discipline is a nonresident of the State of Texas, then the petition shall be filed in Travis County, Texas.

11.02. Petition for Reinstatement: A petition for reinstatement shall be verified and shall set forth all the following information:

A. The name, age, and residential address of the petitioner.

B. The offenses, misconduct, or convictions upon which the disbarment or resignation was based.

C. The name of the body or entity where the Disciplinary Proceeding or Disciplinary Action was adjudicated and the identity of the Committee before whom the Just Cause hearing was held, if any.

D. A statement that the petitioner has made restitution to all persons, if any, naming them and their current addresses, who may have suffered financial loss by reason of the offenses, misconduct, or Serious Crimes for which the petitioner was disbarred or resigned, and that the petitioner has paid all costs and fines assessed in connection with the Disciplinary Proceeding or Disciplinary Action that resulted in his or her disbarment or resignation.

E. A statement that at the time of the filing of the petition the petitioner is of good moral character, possesses the mental and emotional fitness to practice law, and during the five years immediately preceding the filing of the petition, has been living a life of exemplary conduct.

F. A statement that the petitioner has recently read and understands the Texas Disciplinary Rules of Professional Conduct; that he or she has recently read and understands the Texas Lawyer's Creed -- A Mandate For Professionalism; that he or she has a current knowledge of the law; and that the public and profession will be served by the petitioner's reinstatement.

G. A listing of the petitioner's occupations from the date of disbarment or resignation, including the names and current addresses of all partners, associates, and employers, if any, and the dates and duration of all such relationships and employment.

H. A statement listing all residences maintained from the date of disbarment or resignation, and the current names and addresses of all landlords.

I. A statement of the dates, cause numbers, courts, and the general nature of all civil actions in which the petitioner was a party or in which he or she claimed an interest, and that were pending at any time from the date of disbarment or resignation.

J. A statement of the dates, cause numbers, courts, the general nature and disposition of all matters pending at any time from the date of disbarment or resignation and involving the prosecution of the petitioner for any crime, felony, or misdemeanor, together with the names and current addresses of all complaining persons in each such matter.

K. A statement whether any application for a license requiring proof of good moral character for its procurement was filed at any time after the disbarment or resignation and, for each application, the name and address of the licensing authority and the disposition of the application.

L. A statement explaining any proceeding after the date of disbarment or resignation concerning the petitioner's standing as a member of any profession or organization or holder of any license or office that involved censure, removal, suspension of license, revocation of any license, or discipline of the petitioner and the disposition thereof, and the name and address of each authority in possession of the records.

M. A statement whether any allegations or charges, formal or informal, of fraud were made or claimed against the petitioner at any time after the disbarment or resignation and the names and current addresses of the persons or entities making such allegations or charges. The petitioner has a duty to amend and keep current all information in the petition until the petition has been heard and determined by the trial court.

11.03. **Burden of Proof:** The petitioner has the burden of establishing by a preponderance of the evidence that the best interests of the public and the profession, as well as the ends of justice, would be served by his or her reinstatement. The court shall deny the petition for reinstatement if it contains any false statement of a material fact or if the petitioner fails to meet the burden of proof.

11.04. **Notice and Procedure:** The petitioner shall serve notice of a petition for reinstatement by U.S. certified mail, return receipt requested, on the Chief Disciplinary Counsel and shall publish the notice as a paid classified announcement in the Texas Bar Journal. After the filing of the petition and service, the Texas Rules of Civil Procedure shall apply except when in conflict with these rules. All questions of fact and law shall be determined by the trial court without the aid of a jury.

11.05. **Relevant Factors to be Considered:** In determining the petitioner's fitness for reinstatement, in addition to any other relevant matters, the trial court may consider:

A. Evidence concerning the nature and degree of Professional Misconduct for which the petitioner was disbarred or resigned and the circumstances attending the offenses.

B. The petitioner's understanding of the serious nature of the acts for which he or she was disbarred or resigned.

C. The petitioner's conduct during the Disciplinary Proceeding and Disciplinary Action.

D. The profit to the petitioner and the hardship to others.

E. The petitioner's attitude toward the administration of justice and the practice of law.

F. The petitioner's good works and other accomplishments.

G. Any other evidence relevant to the issues of the petitioner's fitness to practice law and the likelihood that the petitioner will not engage in further misconduct.

11.06. Judgment and Conditions: If the court is satisfied after hearing all the evidence, both in support and in opposition to the petition, that the material allegations of the petition are true and that the best interests of the public and the profession, as well as the ends of justice, will be served, the court may render judgment authorizing the petitioner to be reinstated upon his or her compliance within eighteen months from the date of the judgment with Rule II of the Rules Governing Admission to the Bar of Texas in effect as of the date upon which judgment authorizing reinstatement is entered. The judgment shall direct the Board of Law Examiners to admit the petitioner to a regularly scheduled bar examination in accordance with that Board's rules and procedures relating to the examination of persons who have not previously been licensed as lawyers in Texas or in any other state. No judgment of reinstatement may be rendered by default. If after hearing all the evidence the court determines that the petitioner is not eligible for reinstatement, the court may, in its discretion, either enter a judgment denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof that he or she has satisfied the requirements of these rules. The court's judgment may include such other orders as protecting the public and the petitioner's potential clients may require.

11.07. Appeal and Readmission: When a judgment has been signed in any proceeding under this part, the petitioner and the Commission shall each have a right of appeal. If the petition is granted and an appeal is perfected, the trial court's judgment shall be stayed pending resolution of the appeal. After the petitioner has complied with the terms of the judgment of reinstatement and with this part, he or she shall furnish the Commission with a certified copy of the judgment and evidence of compliance and shall pay all membership fees, license fees and assessments then owed and the costs of the reinstatement proceeding. Upon receipt of a certified copy of the judgment, evidence of compliance and proof of payment of all membership fees, license fees and assessments then owed, the Commission shall direct the Chief Disciplinary Counsel to issue a declaration of the petitioner's eligibility for licensure to the Clerk of the Supreme Court. Upon receipt of such declaration, the Clerk of the Supreme Court shall enter the name of the petitioner on the membership rolls of the Supreme Court and shall issue a new Bar card and law license in the name of the petitioner reflecting as the date of licensure the date of the declaration of eligibility. Once the petitioner has taken the attorney's oath, the new Bar card and law license shall be delivered by the Clerk of the Supreme Court to the petitioner.

11.08. Repetitioning: If a petition for reinstatement is denied after a hearing on the merits, the petitioner is not eligible to file another petition until after the expiration of three years from the

date of final judgment denying the last preceding petition.

PART XII. DISABILITY SUSPENSION

12.01. Grounds for Suspension: Any person licensed to practice law in the State of Texas shall be suspended for an indefinite period upon a finding that the attorney is suffering from a Disability.

12.02. Procedure: Should the Chief Disciplinary Counsel reasonably believe based upon investigation of the Complaint that an attorney is suffering from a Disability and be authorized or directed to do so by the Commission, the Chief Disciplinary Counsel shall forward the Complaint and any other documents or statements which support a finding that the attorney is suffering from a Disability immediately to the Board of Disciplinary Appeals. Upon receipt of the Complaint and documents, the Board of Disciplinary Appeals shall forward it to a District Disability Committee to be composed of one attorney; one doctor of medicine or mental health care provider holding a doctorate degree, trained in the area of Disability; and one public member who does not have any interest, directly or indirectly, in the practice of the law other than as a consumer. The members of the District Disability Committee shall be appointed ad hoc by the chair of the Board of Disciplinary Appeals. The Board of Disciplinary Appeals may appoint any attorney to represent the interests of the disabled attorney.

12.03. District Disability Committee: The same rules regarding immunity, expenses, and confidentiality as apply to members of a Committee shall apply to the members appointed to a District Disability Committee. The District Disability Committee shall proceed in a de novo proceeding to receive evidence and determine whether the attorney is suffering from a Disability. In all cases where the referral has been made by the Chief Disciplinary Counsel, the Commission shall carry the burden of establishing by a preponderance of the evidence that the attorney suffers from a Disability. In all cases where the referral is made by an Evidentiary Panel, the party asserting that the attorney is suffering from a Disability shall carry the burden of establishing by a preponderance of the evidence that the attorney suffers from a Disability. The Respondent shall be given reasonable notice and shall be afforded an opportunity to appear before, and present evidence to, the District Disability Committee. If there is no finding of Disability by the District Disability Committee, the entire record and the finding of the District Disability Committee will be returned to the Chief Disciplinary Counsel and the matter shall continue in the disciplinary process from the point where it was referred to the Board of Disciplinary Appeals for the determination of Disability. If, however, there is a finding of Disability, the District Disability Committee shall certify the finding to the Board of Disciplinary Appeals.

12.04. Board of Disciplinary Appeals' Responsibilities: Upon receiving a finding of Disability from the District Disability Committee, the Board of Disciplinary Appeals shall immediately enter its order suspending the attorney indefinitely. The record of all proceedings on disability must be sealed and must remain confidential, except as to the Respondent; only the order of indefinite suspension is to be made public.

12.05. Effect on Limitations: Any statute of limitations applying to a disciplinary matter is tolled during the period of any Disability suspension.

12.06. Reinstatement After Disability Suspension:

A. Venue: An attorney who has been indefinitely suspended under this part may have the suspension terminated by filing a verified petition with the Board of Disciplinary Appeals or a district court. Venue of a district court action is:

1. In the county, immediately prior to suspension, of the Respondent's principal place of practice.

2. If the Respondent did not maintain a place of practice immediately before suspension within the State of Texas, in the county of the Respondent's residence.

3. If neither 1. nor 2. applies, then in Travis County, Texas.

B. Petition and Service: The petition must set out the attorney's name, address, the date, and the docket number of the suspension, a detailed description of his or her activities since the suspension, including employment, the details of any hospitalization or medical treatment, and any other matters the attorney believes entitles him or her to termination of the suspension. A copy of the petition shall be served by U.S. certified mail, return receipt requested, upon the Chief Disciplinary Counsel and the matter shall promptly thereafter be set for hearing. The petition must have the following documents attached: a certified copy of any court order pertaining to the petitioner's competence; an affidavit from a mental health care provider as to the petitioner's current condition; and a report from a physician as to the petitioner's current condition if the suspension was based in whole or in part on the abuse or use of alcohol or other drugs. Such attachments shall not constitute evidence, per se, but the attachment of the same is a requirement of pleading. In an action for reinstatement under this part, either the petitioner or the Commission shall have the right to a jury trial upon timely payment of the required fee.

C. Burden of Proof: The petitioner has the burden to come forward and prove, by a preponderance of the evidence, that the reasons for suspension no longer exist and that termination of the suspension would be without danger to the public and the profession. The Board of Disciplinary Appeals or the district court, as the case may be, may order the petitioner to be examined by one or more health care providers trained in the area for which the attorney was suspended.

D. Time for Filing Subsequent Petitions: A first petition for termination of suspension may be filed at any time after the petitioner's license has been suspended under this part. If the first petition is denied after a hearing, subsequent petitions may

not be filed until the expiration of one year from the date of the denial of the last preceding petition.

E. Judgment: If the attorney meets the burden of proof, the Board of Disciplinary Appeals or the district court shall order a termination of the period of suspension, provided that whenever an attorney has been suspended for a period of two or more consecutive years, he or she may be required by the Board of Disciplinary Appeals or the district court, as the case may be, to obtain a passing grade on the multistate Professional Responsibility portion of the State Bar examination administered by the Board of Law Examiners, or take a prescribed course of study through a law school or through continuing legal education courses, or do both.

F. Disability Probation: The Board of Disciplinary Appeals or the district court, as the case may be, may order that an attorney be placed on probation if the attorney has demonstrated each of the following:

1. The ability to perform legal services and that the attorney's continued practice of law will not cause the courts or profession to fall into disrepute.

2. The unlikelihood of any harm to the public during the period of rehabilitation and the adequate supervision of necessary conditions of probation.

3. A Disability that can be successfully arrested and treated while the attorney is engaged in the practice of law.

Probation shall be ordered for a specified period of time or until further order of the Board of Disciplinary Appeals or the district court, as the case may be, whenever a suspension is probated in whole or in part.

G. Conditions: The order placing an attorney on Disability probation must state the conditions of probation. The conditions must take into consideration the nature and circumstances of the Professional Misconduct and the history, character, and condition of the attorney. Any or all of the following conditions, and such others as the Board of Disciplinary Appeals or the district court deems appropriate, may be imposed:

1. Periodic reports to the Chief Disciplinary Counsel.

2. Supervision over client trust accounts as the Board of Disciplinary Appeals or the district court may direct.

3. Satisfactory completion of a course of study.

4. Successful completion of the multistate Professional Responsibility Examination.

5. Restitution.

6. Compliance with income tax laws and verification of such to Chief Disciplinary Counsel.

7. Limitations on practice.

8. Psychological evaluation, counseling, and treatment.

9. The abstinence from alcohol or drugs.

10. Payment of costs (including Reasonable Attorneys' Fees and all direct expenses) associated with the proceedings.

11. Substance abuse evaluation, counseling, and treatment.

12. Participation in an Impaired Attorney Recovery and Supervision Program if such a program has been adopted by the Board of Directors of the State Bar of Texas.

H. Administration: The Chief Disciplinary Counsel is responsible for the supervision of attorneys placed on Disability probation. Where appropriate, he or she may recommend to the Board of Disciplinary Appeals or to the district court, as the case may be, the modification of the conditions and shall report any failure of the probationer to comply with the conditions of probation. Upon a showing of failure to comply with the conditions of probation, the Board of Disciplinary Appeals or the district court, as the case may be, may revoke the probation or impose such other conditions deemed necessary for the protection of the public and the rehabilitation of the attorney.

12.07. Appeals: A final judgment of the Board of Disciplinary Appeals denying a petition for reinstatement may be appealed to the Supreme Court. If such an appeal is taken, it must be filed with the Clerk of the Supreme Court within fourteen days after the receipt by the appealing party of the determination of the Board of Disciplinary Appeals. Except as herein expressly provided, an appeal must be made pursuant to the then applicable Texas Rules of Appellate Procedure. 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 by order without written opinion. A final judgment of a district court denying a petition for reinstatement may be appealed as in civil cases generally.

PART XIII. CESSATION OF PRACTICE

13.01. Notice of Attorney's Cessation of Practice: When an attorney licensed to practice law in Texas dies, resigns, becomes inactive, is disbarred, or is suspended, leaving an active client matter for which no other attorney licensed to practice in Texas, with the consent of the client, has agreed to assume responsibility, written notice of such cessation of practice shall be mailed

to those clients, opposing counsel, courts, agencies with which the attorney has matters pending, malpractice insurers, and any other person or entity having reason to be informed of the cessation of practice. If the attorney has died, the notice may be given by the personal representative of the estate of the attorney or by any person having lawful custody of the files and records of the attorney, including those persons who have been employed by the deceased attorney. In all other cases, notice shall be given by the attorney, a person authorized by the attorney, a person having lawful custody of the files of the attorney, or by Chief Disciplinary Counsel. If the client has consented to the assumption of responsibility for the matter by another attorney licensed to practice law in Texas, then the above notification requirements are not necessary and no further action is required.

13.02. Assumption of Jurisdiction: A client of the attorney, Chief Disciplinary Counsel, or any other interested person may petition a district court in the county of the attorney's residence to assume jurisdiction over the attorney's law practice. If the attorney has died, such petition may be filed in a statutory probate court. The petition must be verified and must state the facts necessary to show cause to believe that notice of cessation is required under this part. It must state the following:

A. That an attorney licensed to practice law in Texas has died, disappeared, resigned, become inactive, been disbarred or suspended, or become physically, mentally or emotionally disabled and cannot provide legal services necessary to protect the interests of clients.

B. That cause exists to believe that court supervision is necessary because the attorney has left client matters for which no other attorney licensed to practice law in Texas has, with the consent of the client, agreed to assume responsibility.

C. That there is cause to believe that the interests of one or more clients of the attorney or one or more interested persons or entities will be prejudiced if these proceedings are not maintained.

13.03. Hearing and Order on Application to Assume Jurisdiction: The court shall set the petition for hearing and may issue an order to show cause, directing the attorney or his or her personal representative, or if none exists, the person having custody of the attorney's files, to show cause why the court should not assume jurisdiction of the attorney's law practice. If the court finds that one or more of the events stated in Rule 13.02 has occurred and that the supervision of the court is required, the court shall assume jurisdiction and appoint one or more attorneys licensed to practice law in Texas to take such action as set out in the written order of the court including, but not limited to, one or more of the following:

A. Examine the client matters, including files and records of the attorney's practice, and obtain information about any matters that may require attention.

B. Notify persons and entities that appear to be clients of the attorney of the assumption of the law practice, and suggest that they obtain other legal counsel.

C. Apply for extension of time before any court or any administrative body pending the client's employment of other legal counsel.

D. With the prior consent of the client, file such motions and pleadings on behalf of the client as are required to prevent prejudice to the client's rights.

E. Give appropriate notice to persons or entities that may be affected other than the client.

F. Arrange for surrender or delivery to the client of the client's papers, files, or other property.

The custodian shall observe the attorney-client relationship and privilege as if the custodians were the attorney of the client and may make only such disclosures as are necessary to carry out the purposes of this part. Except for intentional misconduct or gross negligence, no person acting under this part may incur any liability by reason of the institution or maintenance of a proceeding under this Part XIII. No bond or other security is required.

PART XIV. INTERIM SUSPENSION

14.01. Irreparable Harm to Clients: Should the Chief Disciplinary Counsel reasonably believe based upon investigation of a Complaint that an attorney poses a substantial threat of irreparable harm to clients or prospective clients and be authorized or directed to do so by the Commission, the Chief Disciplinary Counsel shall seek the immediate interim suspension of the attorney. The Commission shall file a petition with a district court of proper venue alleging substantial threat of irreparable harm, and the district court shall, if the petition alleges facts that meet the evidentiary standard in Rule 14.02, set a hearing within ten days. If the Commission, at the hearing, meets the evidentiary standard and burden of proof as established in Rule 14.02, the court shall enter an order without requiring bond, immediately suspending the attorney pending the final disposition of the Disciplinary Proceedings or the Disciplinary Action based on the conduct causing the harm. The matter shall thereafter proceed in the district court as in matters involving temporary injunctions under the Texas Rules of Civil Procedure. If a temporary injunction is entered, the court may appoint a custodian under Part XIII. If, at the conclusion of all Disciplinary Proceedings and Disciplinary Actions, the Respondent is not found to have committed Professional Misconduct, the immediate interim suspension may not be deemed a "Sanction" for purposes of insurance applications or any other purpose.

14.02. Burden of Proof and Evidentiary Standard: The Commission has the burden to prove the case for an interim suspension by a preponderance of the evidence. If proved by a preponderance of the evidence, any one of the following elements establishes conclusively that the attorney poses a substantial threat of irreparable harm to clients or prospective clients:

A. Conduct by an attorney that includes all of the elements of a Serious Crime as defined in these rules.

B. Three or more acts of Professional Misconduct, as defined in subsections (a) (2) (3) (4) (6) (7) (8) or (10) of Rule 8.04 of the Texas Disciplinary Rules of Professional Conduct, whether or not actual harm or threatened harm is demonstrated.

C. Any other conduct by an attorney that, if continued, will probably cause harm to clients or prospective clients.

PART XV. MISCELLANEOUS PROVISIONS

15.01. Enforcement of Judgments: The following judgments have the force of a final judgment of a district court: final judgments of an Evidentiary Panel and judgments entered by the Board of Disciplinary Appeals. To enforce a judgment, the Commission may apply to a district court in the county of the residence of the Respondent. In enforcing the judgment, the court has available to it all writs and processes, as well as the power of contempt, to enforce the judgment as if the judgment had been the court's own.

15.02. Effect of Related Litigation: The processing of a Grievance, Complaint, Disciplinary Proceeding, or Disciplinary Action is not, except for good cause, to be delayed or abated because of substantial similarity to the material allegations in pending civil or criminal litigation.

15.03. Effect on Related Litigation: Neither the Complainant nor the Respondent is affected by the doctrines of res judicata or estoppel by judgment from any Disciplinary Action.

15.04. Effect of Delay or Settlement by Complainant: None of the following alone justifies the discontinuance or abatement of a Grievance or Complaint being processed through the disciplinary system: (1) the unwillingness or the neglect of a Complainant to cooperate; (2) the settlement or compromise of matters between the Complainant and the Respondent; (3) the payment of monies by the Respondent to the Complainant.

15.05. Effect of Time Limitations: The time periods provided in Rules 2.10, 2.12, 2.15, 2.17C, 2.17E, 2.17P, 2.25, 3.02, 3.04, 7.11, 9.02, 9.03, 10.02, 11.01, 11.08, and 12.06(d) are mandatory. All other time periods herein provided are directory only and the failure to comply with them does not result in the invalidation of an act or event by reason of the noncompliance with those time limits.

15.06. Limitations, General Rule and Exceptions:

A. *General Rule*: No attorney may be disciplined for Professional Misconduct that occurred more than four years before the date on which a Grievance alleging the Professional Misconduct is received by the Chief Disciplinary Counsel.

B. *Exception: Compulsory Discipline:* The general rule does not apply to a Disciplinary Action seeking compulsory discipline under Part VIII.

C. *Exception: Alleged Violation of the Disclosure Rule:* A prosecutor may be disciplined for a violation of Rule 3.09(d), Texas Disciplinary Rules of Professional

Conduct, that occurred in a prosecution that resulted in the wrongful imprisonment of a person if the Grievance alleging the violation is received by the Chief Disciplinary Counsel within four years after the date on which the Wrongfully Imprisoned Person was released from a Penal Institution.

D. *Effect of Fraud or Concealment*: Where fraud or concealment is involved, the time periods stated in this rule do not begin to run until the Complainant discovered, or in the exercise of reasonable diligence should have discovered, the Professional Misconduct.

15.07. Residence: For purposes of these rules, a person licensed to practice law in Texas is considered a resident of the county in Texas of his or her principal residence. A person licensed to practice law in Texas but not residing in Texas is deemed to be a resident of Travis County, Texas, for all purposes.

15.08. Privilege: All privileges of the attorney-client relationship shall apply to all communications, written and oral, and all other materials and statements between the Chief Disciplinary Counsel and the Commission subject to the provisions of Rule 6.08.

15.09. Immunity: No lawsuit may be instituted against any Complainant or witness predicated upon the filing of a Grievance or participation in the attorney disciplinary and disability system. All members of the Commission, the Chief Disciplinary Counsel (including Special Assistant Disciplinary Counsel appointed by the Commission and attorneys employed on a contract basis by the Chief Disciplinary Counsel), all members of Committees, all members of the Board of Disciplinary Appeals, all members of the District Disability Committees, all officers and Directors of the State Bar, and the staff members of the aforementioned entities are immune from suit for any conduct in the course of their official duties. The immunity is absolute and unqualified and extends to all actions at law or in equity.

15.10. Maintenance of Funds or Other Property Held for Clients and Others: Every attorney licensed to practice law in Texas who maintains, or is required to maintain, a separate client trust account or accounts, designated as such, into which funds of clients or other fiduciary funds must be deposited, shall further maintain and preserve for a period of five years after final disposition of the underlying matter, the records of such accounts, including checkbooks, canceled checks, check stubs, check registers, bank statements, vouchers, deposit slips, ledgers, journals, closing statements, accountings, and other statements of receipts and disbursements rendered to clients or other parties with regard to client trust funds or other similar records clearly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client.

15.11. Restrictions on Imposition of Certain Sanctions:

A. Public reprimands shall not be utilized if:

1. A public reprimand has been imposed upon the Respondent within the preceding five (5) year period for a violation of the same disciplinary rule; or

2. The Respondent has previously received two or more public reprimands whether or not for violations of the same disciplinary rule within the preceding five year period.

B. Fully probated suspensions shall not be utilized if:

1. A public reprimand or fully probated suspension has been imposed upon the Respondent within the preceding five year period for a violation of the same disciplinary rule; or

2. The Respondent has previously received two or more fully probated suspensions whether or not for violations of the same disciplinary rule within the preceding five year period; or

3. The Respondent has previously received two or more sanctions of public reprimand or greater imposed for conflict of interest, theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee.

C. In the event that a fully probated suspension is not available under this rule, any sanction imposed shall be for no less than thirty days of active suspension.

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