

# IN THE SUPREME COURT OF TEXAS

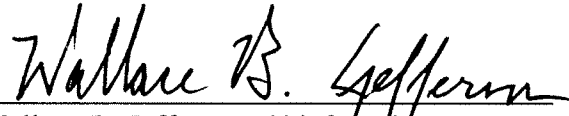
Misc. Docket No. 09- **9089**

## ORDER ADOPTING AMENDMENTS TO TEXAS RULE OF DISCIPLINARY PROCEDURE 6.06 AND BOARD OF DISCIPLINARY APPEALS INTERNAL PROCEDURAL RULES

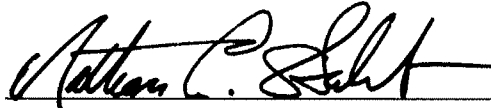
**ORDERED** that:

1. Texas Rule of Disciplinary Procedure 6.06 and the Board of Disciplinary Appeals (BODA) Internal Procedural Rules are amended as follows.
2. By Order dated February 24, 2009, in Misc. Docket No. 09-9034, the Supreme Court of Texas proposed amendments to Texas Rule of Disciplinary Procedure 6.06 and BODA Internal Procedural Rules and invited public comment. Following public comment, the Court made additional revisions to Texas Rule of Disciplinary Procedure 6.06.
3. This Order contains the final version of the amended rules that take effect on July 1, 2009. The comment appended to Texas Rule of Disciplinary Procedure 6.06 is intended to inform the construction and application of the rule.
4. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this Order to each elected member of the Legislature; and
  - d. cause a copy of this Order to be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>.

In Chambers, this 8<sup>th</sup> day of June, 2009.

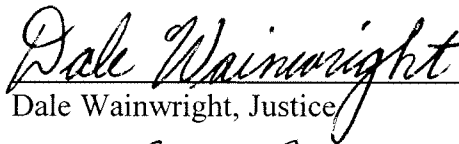


Wallace B. Jefferson, Chief Justice

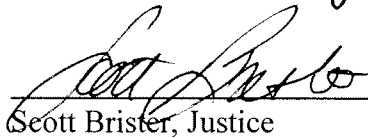


Nathan L. Hecht, Justice

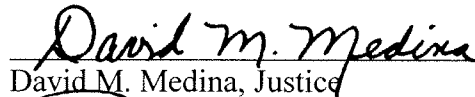
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Harriet O'Neill, Justice



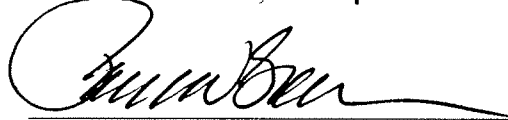
Dale Wainwright, Justice



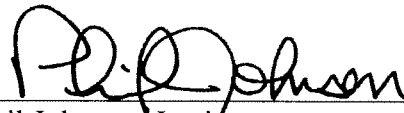
Scott Brister, Justice



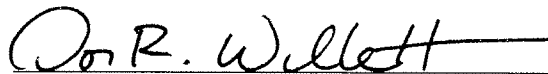
David M. Medina, Justice



Paul W. Green, Justice



Phil Johnson, Justice



Don R. Willett, Justice

## TEXAS RULES OF DISCIPLINARY PROCEDURE

### 6.06. Publication of Court and Board of Disciplinary Appeals Opinions

All cases involving the Professional Misconduct or Disability of an attorney appealed to the Courts of Appeals or to the Supreme Court of Texas must be published in the official reporter system. This provision takes precedence over the applicable Texas Rules of Appellate Procedure.

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.

## BODA INTERNAL PROCEDURAL RULES

### Rule 1.16 BODA Opinions

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

(b) Only a member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this Rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

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

#### **Rule 4.10 Decision and Judgment**

(a) **Decision.** BODA may affirm in whole or in part the decision of the evidentiary panel, modify the panel's finding(s) and affirm the finding(s) as modified, reverse in whole or in part the panel's finding(s) and render such decision as the panel should have rendered, or reverse the panel's finding(s) and remand the cause for further proceedings to be conducted by:

- (1) the panel that entered the finding(s); or
- (2) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

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

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

(cd) **Mandate.** In every case where BODA reverses or otherwise modifies the judgment appealed from, BODA shall issue a mandate in accordance with its judgment and deliver it to the evidentiary panel.