

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 98- 9110

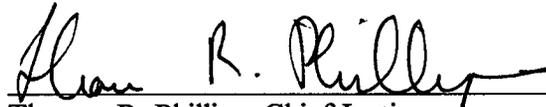
APPROVAL OF A REFERENDUM OF THE STATE BAR OF TEXAS MEMBERSHIP REGARDING PROPOSED AMENDMENTS TO THE TEXAS RULES OF DISCIPLINARY PROCEDURE

ORDERED:

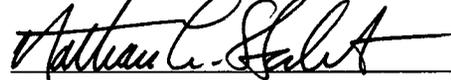
Pursuant to Tex. Gov. Code Ann. §81.024 (Vernon Supp. 1997) the Supreme Court of Texas approves a referendum of the Membership of the State Bar of Texas on the following:

Proposed Amendments to Rules 1.06, 2.02, 2.03, 2.04, 2.05, 2.06, 2.07, 2.09, 2.10, 2.11, 2.12, 2.13, 2.15, 2.16, 2.17, 2.19, 2.20, 2.21, 3.01, 3.02, 3.03, 3.07, 3.10, 3.11, 3.13, 3.14, 4.01, 4.06, 8.01, 8.02, 8.03, 8.04, 8.05, 8.06, 8.07, 10.04, 11.01, 11.02, 11.03, 11.04, 11.05, 11.06, 11.07, 12.02, 12.06, 13.01, 15.01, 15.02, 15.03, 15.04, 15.07, 15.09, 15.10, 15.11 and 15.13 of the Texas Rules of Disciplinary Procedure.

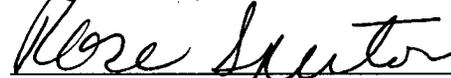
SIGNED AND ENTERED THIS 1st day of July, 1998.


Thomas R. Phillips, Chief Justice

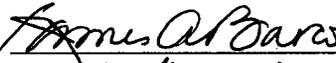
Raul A. Gonzalez, Justice


Nathan L. Hecht, Justice

Craig T. Enoch, Justice


Rose Spector, Justice

Priscilla R. Owen, Justice


James A. Baker, Justice

Greg Abbott, Justice


Deborah G. Hankinson, Justice

IN THE SUPREME COURT OF TEXAS
Misc. Docket No. 98-_____

PETITION TO AMEND THE TEXAS RULES OF DISCIPLINARY PROCEDURE

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF SAID COURT:

The State Bar of Texas hereby respectfully petitions the Court to amend Rules 1.06, 2.02, 2.03, 2.04, 2.05, 2.06, 2.07, 2.09, 2.10, 2.11, 2.12, 2.13, 2.15, 2.16, 2.17, 2.19, 2.20, 2.21, 3.01, 3.02, 3.03, 3.07, 3.10, 3.11, 3.13, 3.14, 4.01, 4.06, 8.01, 8.02, 8.03, 8.04, 8.05, 8.06, 8.07, 10.04, 11.01, 11.02, 11.03, 11.04, 11.05, 11.06, 11.07, 12.02, 12.06, 13.01, 15.01, 15.02, 15.03, 15.04, 15.07, 15.09, 15.10, 15.11 and 15.13 of the Texas Rules of Disciplinary Procedure. In support hereof, the Peitioner states as follows:

I.

The Board of Directors of the State Bar of Texas, at its meeting on April 25, 1997, resolved by a majority vote to make the recommendation and request for the referendum made herein.

II.

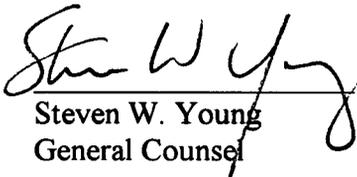
The Petitioner recommends and requests that pursuant to Tex. Gov. Code Ann. §81.024 (Vernon Supp. 1997) a referendum ballot be submitted to the membership of the State Bar of Texas on questions of amending Rules 1.06, 2.02, 2.03, 2.04, 2.05, 2.06, 2.07, 2.09, 2.10, 2.11, 2.12, 2.13, 2.15, 2.16, 2.17, 2.19, 2.20, 2.21, 3.01, 3.02, 3.03, 3.07, 3.10, 3.11, 3.13, 3.14, 4.01, 4.06, 8.01, 8.02, 8.03, 8.04, 8.05, 8.06, 8.07, 10.04, 11.01, 11.02, 11.03, 11.04, 11.05, 11.06, 11.07, 12.02, 12.06, 13.01, 15.01, 15.02, 15.03, 15.04, 15.07, 15.09, 15.10, 15.11 and 15.13 of the Texas Rules of Disciplinary Procedure. The changes to the Rules are set forth in Exhibit "A".

III.

WHEREFORE, the State Bar of Texas Board of Directors requests that the Supreme Court of Texas approve, adopt, and promulgate such amendments and send such amendments to the membership of the State Bar of Texas for a referendum.

Attest:

Respectfully submitted,


Steven W. Young
General Counsel


Antonio Alvarado
Executive Director

The Texas Rules of Disciplinary Procedure — Exhibit "A"

1.06 Definitions:

- A. "Board" means the Board of Directors of the State Bar of Texas.
- B. "Chief Disciplinary Counsel" means the person serving as Chief Disciplinary Counsel and any ~~and~~ or all of his or her assistants.
- C. "Commission" means the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.
- D. "Committee" means ~~any of the grievance committees within a single disciplinary District~~ ~~the District grievance committee and the District Professionalism Enhancement Committee.~~
- E. "Complainant" means the person, firm, corporation, or other entity initiating a Complaint or Inquiry.
- F. "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.
- G. "Director" means a member of the Board of Directors of the State Bar of Texas.
- H. "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.
- I. "Disciplinary Action" means a proceeding brought by or against an attorney before an evidentiary panel of a Committee or any ~~judicial adjudicatory~~ proceeding covered by these rules.
- J. "Disciplinary Petition" means a pleading that satisfies the requirements of Section 3.01.
- K. "Disciplinary Proceeding" means the investigation and processing of an Inquiry or Complaint before a Disciplinary Action.
- L. "District" means disciplinary district.
- M. "Evidentiary Hearing" means ~~a de novo proceeding before a panel of a grievance committee with venue after an investigatory panel has found Just Cause, Respondent and the investigatory panel have been unable to agree upon a sanction, and Respondent has either elected or defaulted~~

~~into the evidentiary process.~~

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

N.O. "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.

~~Θ. "Intentional Crime" means 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.~~

P. "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.

Q. "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, or another jurisdiction~~ 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. Failure of a Respondent to furnish information subpoenaed by a Committee, unless he or she, in good faith, asserts a privilege or other legal grounds for the failure to do so.
5. Engaging in conduct that constitutes barratry as defined by the law of this ~~s~~State.
6. Failure to comply with Section 13.01 of these rules relating to notification of an attorney's cessation of practice.
7. Engaging in the practice of law either during a period of suspension or when on inactive status.
8. Conviction of a Serious Crime, or being placed on probation for a Serious Crime with or without an adjudication of guilt.

~~9. Conviction of an Intentional Crime, or being placed on probation for an Intentional Crime with or without an adjudication of guilt.~~

R. "Reasonable Attorney's 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.

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

T. "Sanction" means any of the following:

1. Disbarment;
2. Resignation in lieu of ~~disbarment~~ disciplinary action;
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; and
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 Texas) of any payments made by reason of Respondent's Professional Misconduct); and
- b. Payment of reasonable attorneys' fees, including attorney fees for the time of Special Counsel and contract attorneys and all direct expenses associated with the proceedings; and
- c. Any additional educational requirement.

U. "Serious Crime" means (1) barratry; (2) any felony involving moral turpitude; any misdemeanor crime involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or (3) any crime involving misapplication of money or other property held as a fiduciary; or (4) any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

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

PART II

The District Grievance and the Professionalism Enhancement 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 District Grievance 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. District Professionalism Enhancement Committees must consist of no fewer than three 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. Deliberations or discussions of the Committee on the merits of any grievance or Professional Enhancement Program Referral may shall be conducted only in the presence of the members of the Committee and the Committee's counsel or staff.

2.03 (a) Time for Appointment and Terms of District Grievance Committees: All persons serving on a District Grievance 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. 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 District Grievance 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 District Grievance Committee who has served two consecutive terms, whether full or partial terms, is not eligible for reappointment to a District Grievance Committee until at least three years have passed since his or her last prior service. Such term limitation, however, shall not preclude such member from being appointed subsequently to a District Professionalism Enhancement Committee. No member may serve as Committee chair of a District Grievance Committee for more than two consecutive terms of one year each. All members are eligible for election to the position of chair.

(b) Time for Appointment and Terms of District Professional Enhancement Committees: All persons serving on a District Professional Enhancement Committee at the time these rules become effective shall continue to serve for their then unexpired terms, subject to resignation or removal as therein 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. 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 District Professional Enhancement Committees shall continue to hold office until the nominations and appointments are made and the successor member is qualified. One-third of each new District Professional Enhancement 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 District Professional Enhancement Committee who has served two consecutive terms on a District Professional Enhancement Committee, whether full or partial terms, is not eligible for reappointment to a District Professionalism Enhancement Committee until at least three years have passed since his or her last prior service. All members of a District Professionalism Enhancement Committee are eligible for election to the position of District

Professionalism Enhancement 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. The last duly elected committee chairperson shall conduct an election for chair of each committee by no later than July 15 of each year. If no such election has occurred by July 15 the director of the State Bar district or designee shall conduct an election. Such an election may be held by mail ballot. The Committee Chair shall be elected by a majority vote of the members voting. Members may vote for themselves as chair. If an organizational meeting is held, the oath shall be administered to each new member at that meeting; otherwise, the new member oath may be administered at any time prior to a member hearing his or her first case.~~

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 (or the District Professionalism Enhancement 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 or the District Professionalism Enhancement 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 (a) Duties Assignment of District Grievance Committee Members: Each member of a District Grievance Committee shall act through panels assigned by the chair of the District Grievance Committee for investigatory hearings 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 grievance. At the time the Respondent is provided a copy of the Complaint, pursuant to Rule 2.09, Respondent shall also be provided a list of the names of all the Committee members within the District indicating the city in which each Committee member resides or maintains his or her principal place of employment or practice. A member is subject to recusal or is disqualified to sit as a panel member for either an investigatory hearing or an evidentiary hearing if a district judge would, under similar circumstances, be disqualified or recused. If a member is disqualified or recused, another panel member shall may be appointed by the District Grievance Committee chair. No peremptory challenges of a panel Committee member are allowed. Any alleged grounds for disqualification or recusal of a panel Committee member are conclusively waived by the Respondent if not brought to the attention of the panel Chief Disciplinary Counsel in writing within ten days after receipt of a notification of the names and addresses of members of Committee member list the panel; however, grounds for disqualification not reasonably discoverable within the ten-day period may be asserted within ten days after they were are discovered or, in the exercise of reasonable diligence, should have been discovered. The Panel Chair may recuse any challenged panel member if that member would be recused or disqualified to act as a district judge under the same or similar circumstances. The District Grievance Committee chair may review the determination upon request. The determination by the District Grievance Committee Chair is conclusive and not subject to review. In the event the challenge pertains to the District Grievance Committee chair, the Board of Disciplinary Appeals will appoint a chair from an adjoining committee to review the determination upon request.

(b) Assignment of District Professionalism Enhancement Committees. District Professionalism Enhancement Committees may act as a whole or through panels, as assigned by the chair of the District Professionalism Enhancement Committee.

2.07 Duties of District Grievance Committees: District Grievance Committees shall act through panels, as assigned by the District Grievance Committee chairs, to conduct investigatory hearings or evidentiary hearings. No panel of a District Grievance Committee may consist of more than one-half of all members of the District Grievance Committee or fewer than three members. ~~If a member of a panel is disqualified or unable to serve, the chair shall appoint a replacement.~~ Panels must be composed of two attorney members for each public member. A majority constitutes a quorum, and business shall be conducted upon majority vote of those members present, a quorum being had. ~~No panel may conduct business with fewer than three members unless waived by the Respondent and Complainant in writing. If fewer than three members appear and the requirement of three members is not waived, the hearing will be reset and continued.~~ 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 ~~to sit~~ in the same matter for both the investigatory panel and the evidentiary panel. ~~All Committee panels must be randomly selected by the chair.~~ Any tie vote is a vote in favor of the position of the Respondent.

2.09 Classification of Inquiries and Complaints: Every written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, shall be promptly forwarded to the Office of the Chief Disciplinary Counsel. The Chief Disciplinary Counsel shall examine each such written statement to determine whether it constitutes an Inquiry or a Complaint. In those instances in which the Complaint alleges a violation that involves no direct harm to a particular individual or entity, or with respect to which the testimony of the individual or entity is not reasonably anticipated to be necessary, upon request of that individual or entity initiating the Complaint, a restated Complaint shall be made in the name of the State Bar without identification of that individual or entity; and The restated complaint shall be furnished to the lawyer Respondent in accordance with these rules. In such cases, the name of the individual or entity shall remain confidential. If the statement is determined to constitute an Inquiry, the Chief Disciplinary Counsel shall notify the Complainant of the dismissal, who has the right to amend the statement; or within thirty days after receipt of the notice, appeal the determination to the Board of Disciplinary Appeals. Complainants may amend the statement with additional material for reconsideration one time only following dismissal by the Chief Disciplinary Counsel, the Board of Disciplinary Appeals, or the Committee. Statements determined by the Chief Disciplinary Counsel to be inquiries may be forwarded to the District Professionalism Enhancement Committee. If the statement 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 by delivering the response to the Committee Office of the Chief Disciplinary Counsel and delivering a copy to the complainant both within thirty days after receipt of the notice. The notice shall advise notify 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 Chief Disciplinary Counsel shall then forward the statement to the Committee. The Chief Disciplinary Counsel may grant the Respondent a reasonable extension to respond to the complaint. The Respondent may, within thirty days after receipt of a notice to respond, appeal to the Board of Disciplinary Appeals the determination of the Chief Disciplinary Counsel that the statement constitutes a Complaint. If the Respondent perfects an appeal, the pendency of the appeal does not automatically stay the investigation and determination of Just Cause, but no evidentiary panel may be assigned while an appeal is pending on the issue of whether a statement constitutes a Complaint. All proceedings shall immediately be dismissed if the determination of the Chief Disciplinary Counsel is reversed and it is finally held that a statement does not constitute a Complaint.

2.10 Place of Forum: Venue of District Grievance Committee proceedings shall be in accordance with the following:

A. Investigatory Panel Proceedings. Proceedings of an investigatory panel of a District Grievance Committee shall be conducted by a panel of the District Grievance Committee for the county where the alleged Professional misconduct occurred, in whole or in part. If the alleged misconduct occurred entirely outside of Texas, the proceedings of an investigatory panel of a Committee shall be conducted by an investigatory panel of the Committee for the county of Respondent's residence if in Texas. In all other instances, disciplinary proceedings must take place in Travis County, Texas. Any motion by Respondent to transfer, based upon facts existing at the time the Respondent receives the notice to respond to the Complaint, must be filed within twenty days after Respondent's receipt of notice to respond. Otherwise, Respondent's right to seek transfer based upon such facts is waived. Any motion to transfer by Complainant must be made within ten days after receipt of the notice from the Chief Disciplinary Counsel that the statement has been classified as a Complaint, or Complainant's right to seek transfer is waived. Dismissal of a previous disciplinary proceedings or action complaint by the Chief Disciplinary Counsel or Committee shall not be grounds for requesting transfer to a different region.

B. Evidentiary Panel Proceedings. If the investigatory panel finds Just Cause and is unable to negotiate a Sanction acceptable to it and to the Respondent, or if there is no sufficient Sanction available to the investigatory panel, the matter shall be transferred to a Committee for 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, to the county of Respondent's residence; or if the Respondent does not maintains neither a residence nor a place of practice within the State of Texas,~~ then to the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, disciplinary actions must take place in Travis County, Texas.

2.11 Investigation and Determination of Just Cause: No more than thirty days after receiving the Respondent's written response to the Complaint, the chair of the Committee having jurisdiction shall promptly convene an investigatory panel to determine whether there is Just Cause. Respondent and Complainant shall each be invited to appear before the investigatory panel but the inability or failure to so appear does not abate or preclude further proceedings. No motion for continuance, resetting, or agreed pass may be granted unless required by the interest of justice. The investigatory panel may receive such evidence as the panel in its discretion finds appropriate for purposes of determining Just Cause. ~~The hearings, deliberations, voting, and discussions of an investigatory panel are strictly confidential and are not subject to discovery or production.~~ Complainant, Counsel, and Respondent each have the right to cause a record of the testimony of witnesses to be recorded made, at the requesting party's expense, provided that all records and transcripts such recorded testimony and any exhibits requested to be made a part of the record remain in the custody of the Committee and may be released only for use in disciplinary matters or appeals therefrom or for District Professionalism Enhancement Committee proceedings unless ordered by a court.

2.12 Disposition Upon a Failure to Find Just Cause: If no member of the investigatory panel votes in favor of a finding of Just Cause, the panel shall forthwith dismiss the Complaint and so advise the Complainant, the Respondent, and the Chief Disciplinary Counsel ; provided, however, that the Complaint may be forwarded to the District Professionalism Enhancement Committee for consideration of whether to offer professionalism enhancement assistance. If any member of the first assigned investigatory panel votes to find that Just Cause exists, the Complainant may, upon written request submitted to the Chief Disciplinary Counsel within thirty (30) days of the mailing of the notice of non-unanimous dismissal, submit request the complaint be submitted his or her Complaint to a second investigatory panel of the same Committee, which shall make a de novo determination of whether Just Cause exists. If a majority of the second investigatory panel fails to find that Just Cause exists, it shall forthwith dismiss the Complaint and so advise the Complainant, the Respondent, and the Chief Disciplinary Counsel. Such a dismissal is without prejudice to the Complainant, who may, within thirty days from receipt of notice of dismissal, refile his or her amended Complaint, one time, with additional evidence not previously presented. Filings, subsequent to the last amended complaint, shall be returned to the Complainant. Files of dismissed Disciplinary Proceedings will be retained for one hundred eighty days after disposition, after which time the files may be destroyed unless the Complainant refiles the Complaint within the permitted time. No permanent record will be kept of Complaints dismissed except to the extent necessary for statistical reporting purposes.

2.13 Disposition Upon a Finding of Just Cause: Should an investigatory panel find Just Cause, it may, with the consent of Respondent, impose any Sanction available under these rules except disbarment. It may also with or without Sanctions, impose a referral for rehabilitation (including a referral to the District Professionalism Enhancement Committee) with the consent of Respondent. If a negotiated result is reached, or if the investigatory panel wishes to offer an agreed result to the Respondent, its terms shall be embodied in a written judgment which shall contain the findings, conclusions, Sanctions, or referral for rehabilitation agreed upon. In any judgment of disbarment or active suspension, the judgment 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 Supreme Court. In all judgments imposing active suspension or disbarment, the Respondent shall be enjoined from the practice of law during the period of suspension or disbarment. Such The judgment shall promptly be delivered to Respondent and Respondent who shall have 20 45 days from receipt of such judgment to sign and return it to the Chief Disciplinary Counsel. If the Chief Disciplinary Counsel has not received the judgment signed by the Respondent within 20 45 days after the of rRespondent's received receipt of it, the matter shall proceed as if no negotiated result had been reached. If the investigatory panel is unable to negotiate a Sanction with the Respondent, it shall so notify the Complainant and the Respondent by U.S. certified mail, return receipt requested, and the matter will proceed. The procedure for making such an election is as provided in Section 2.14.

~~2.15 Confidentiality. All information, proceedings, hearing transcripts, statements, and any other information coming to the attention of the investigatory panel of the Committee must remain confidential and may not be disclosed to any person or entity (except the Chief Disciplinary Counsel) unless disclosure is ordered by the court. If there is a finding of Just Cause and any Sanction other than a private reprimand (which may include restitution and payment of Attorneys' Fees) imposed by agreement of the Respondent, all of the information, proceedings, hearing transcripts, documents, statements, and other information coming to the attention of the investigatory panel shall be, upon proper request, made public. Notwithstanding anything herein to the contrary, any action taken by a Committee to refer a matter to the Board of Disciplinary Appeals for attorney Disability screening and determination must remain confidential.~~

2.15 Confidentiality.

A. Disciplinary proceedings are strictly confidential and not subject to discovery, except as otherwise provided in this Rule 2.15.

B. The pendency, subject matter and status of a disciplinary proceeding may be disclosed by Complainant, Respondent, or Chief Disciplinary Counsel if the Respondent has waived confidentiality or the disciplinary proceeding is based upon a conviction for a serious crime.

C. While disciplinary proceedings are confidential, facts and evidence which are discoverable elsewhere are not made confidential merely because they are discussed or introduced in the course of a disciplinary proceeding.

D. If a record of a witness's statement has been made pursuant to Rule 2.11, upon a showing of substantial need for the materials and the inability without undue hardship to obtain the substantial equivalent of the materials by other means, the Respondent, the Complainant or the Chief Disciplinary Counsel may petition a court of competent jurisdiction to determine that the recorded statement made by a witness in an investigatory hearing may be discovered and utilized in a court, administrative, or disciplinary proceeding. Neither members of the investigatory panel nor employees of the Chief Disciplinary Counsel are competent to testify regarding the contents of such statements.

E. Notwithstanding anything to the contrary herein, a record of a witness's statement made pursuant to Rule 2.11 may be used by either the Chief Disciplinary Counsel or Respondent in a disciplinary action arising out of or relating to the same occurrence or transaction which was the subject of the prior disciplinary proceeding in which it was made.

F. The deliberations and voting of an investigatory panel or an evidentiary panel are strictly confidential and not subject to discovery. No person is competent to testify as to such deliberations and voting.

G. If there is a finding of just cause and any sanction, other than a private reprimand is imposed, all information, hearing transcripts, documents, statements and other information coming to the attention of the investigatory panel shall be, upon proper request, made public. However, the Chief Disciplinary Counsel may not disclose work product or privileged attorney client communications without the consent of the client.

H. Notwithstanding anything herein to the contrary, any action taken by a Committee to refer a matter to the Board of Disciplinary Appeals for a disability determination shall remain confidential.

2.16 **Evidentiary Hearing:** If the investigatory panel of the **District Grievance** Committee finds Just Cause and if the Respondent fails to elect to have the **complaint case** tried in the district court, ~~the matter~~ it may be transferred, if necessary, in accordance with the venue provisions of these rules. The chair of the **District Grievance** Committee to which the matter is transferred shall appoint an evidentiary panel to conduct an evidentiary hearing, to make findings of fact and conclusions of law, and either to dismiss the Complaint or to impose sanctions. The evidentiary panel may not include any person who served on the investigatory panel 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 lawyers for ~~every~~ ~~each~~ public member. Proceedings before an evidentiary panel of the **District Grievance** Committee include:

A. ~~Service upon the Respondent of a written statement of the specific charge or charges against the Respondent, shall be made upon the Respondent~~ together with a copy of the complaint. The charge shall be formulated by the ~~evidentiary panel on the basis of the findings of the investigatory panel.~~ **Chief Disciplinary Counsel to include 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, as well as the specific disciplinary rules allegedly violated by the acts or conduct or other ground for seeking Sanctions.** The notification shall be given by the Chief Disciplinary Counsel and shall be served by U.S. certified mail, return receipt requested, upon the Respondent or upon his or her attorney ~~counsel, if an attorney has entered an appearance by counsel has been made before the District Grievance Committee~~ on behalf of the Respondent, or by any other means of service permitted by the Texas Rules of Civil Procedure. At the time of service upon the Respondent, the Chief Disciplinary Counsel shall also file with the **District Grievance** Committee and serve upon the Respondent a Proposed Hearing Order containing at least the following:

1. A list, including names, addresses, and telephone numbers of all witnesses expected to be called to testify before the panel in person or by deposition.
2. A written summary of the issues of fact expected to be contested.
3. A list of exhibits expected to be presented to the panel at the hearing.
4. Written summary of the testimony expected to be elicited from each witness.
5. The estimated length of time for presenting the entire case to the panel.

B. A responsive pleading either admitting or denying each specific charge must be filed by or on behalf of the Respondent within twenty days after the date of service of the notification of the specific charge or charges against the Respondent. At the time of filing the responsive pleading, Respondent shall also file a Proposed Hearing Order containing any modifications that the Respondent desires to make to the proposed hearing order filed by the Chief Disciplinary Counsel. ~~Respondent's failure to file a proposed hearing order within the time permitted shall result in Respondent's inability to request modifications to the Proposed Hearing Order filed by the Chief Disciplinary Counsel.~~ Any failure to file such a responsive pleading and proposed hearing order within the time permitted constitutes a default, and all facts alleged in the charging document shall be taken as true for the purposes of the Disciplinary Action unless:

(I) within seven days after receipt of notice of such default, Respondent files a verified motion reflecting ~~alleging~~ good cause for ~~failing~~ failure to timely file a responsive pleading and proposed hearing order and files, subject to leave being granted, a responsive pleading and ~~(with or without~~ proposed hearing order) and

(II) the evidentiary panel finds that good cause exists for Respondent's failure to have timely filed a responsive pleading and proposed hearing order.

C. The final hearing order may be amended for good cause shown at the discretion of the chair, and shall control the hearing. If the final hearing order differs from the proposed hearing order filed by the Respondent in any material respect, Respondent may, by filing a written request with the chair and the Chief Disciplinary Counsel within ten days after the date of actual receipt of the final hearing order, remove the case to a court of proper venue for a trial de novo under Part III.

D. Compulsory process to compel the attendance of witnesses, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and to the Chief Disciplinary Counsel.

E. The Respondent and the Complainant may, if they so choose, have counsel present during any evidentiary hearing.

F. ~~The parties to the Disciplinary Action are the Commission for Lawyer Discipline, represented by the Chief Disciplinary Counsel (or Special Assistant Disciplinary Counsel), and the Respondent. The Respondent, the complainant, and the Chief Disciplinary Counsel may, if they so choose, confront witnesses, including the Complainant. Cross-examination may be conducted only by the Respondent, or his or her counsel, and by the Chief Disciplinary Counsel (or Special Assistant Disciplinary Counsel). The inability or failure to exercise this opportunity does not abate or preclude further proceedings.~~

G. In the discretion of the evidentiary panel, limited discovery is permissible upon a clear showing of good cause and substantial need. The party seeking discovery must file with the evidentiary panel a verified written request for discovery showing good cause and substantial need no later than twenty days after the filing of, or ~~at~~ the time for the filing of, the first responsive pleading by the Respondent. If good cause and substantial need are demonstrated, the panel shall by written order permit the discovery, including in the order any limitations or deadlines on the discovery. Such discovery, if any, as may be permitted must be conducted by the methods provided by the Texas Rules of Civil Procedure in effect at the time and may, upon motion, be enforced by a district court of proper jurisdiction. A decision of an evidentiary panel on a discovery matter may be reviewed only on appeal of the entire case. No reversal of a case may be based on the granting or denial of a discovery request without a showing of material unfairness ~~prejudice~~ or harm.

H. ~~The presiding member of the evidentiary panel~~ ~~panel chair or designee~~ 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 Civil Evidence; provided, however, that admission or exclusion of evidence shall be in the discretion of the presiding member of the evidentiary panel and no ruling upon the evidence shall be a basis for reversal solely because it fails to strictly comply with the Texas Rules of Civil Evidence.

I. The burden of proof is upon ~~Complainant and the Chief Disciplinary Counsel~~ ~~the Commission for Lawyer Discipline~~ to prove the material allegations of the charge by a preponderance of the evidence.

J. 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 record~~. Such costs shall be taxed at the conclusion of the appeal by the Board of Disciplinary Appeals.

K. All proceedings before an evidentiary panel, except its deliberations, are open to the public.

L. A written decision by the evidentiary panel must be issued promptly after the consummation of evidence. Matters must be set for hearing on a date not sooner than forty-five days nor later than ninety days after the filing of the responsive pleading of the Respondent. If the Respondent fails to ~~answer~~ ~~file a responsive pleading~~, a hearing for default may be set at any time no less than ten days ~~from~~ ~~after~~ the date which Respondent received his notice of default. No continuance may be granted unless required by the interests of justice.

2.17 Imposition of Sanctions: If the evidentiary panel finds that a Sanction should be assessed against the Respondent, the written order of the evidentiary panel shall assess the Sanction. The evidentiary panel may, in its discretion, conduct a separate evidentiary hearing on the appropriate Sanction to be imposed. ~~Private reprimand is not an available Sanction in a hearing before an evidentiary panel.~~ In imposing 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 Committee action.

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

2.19 Notice of Decision: The Complainant and Respondent must be notified in writing of the decision of the evidentiary panel, including any Sanctions imposed. Such notice shall be mailed within 10 days by U.S. certified mail, return receipt requested, to the Complainant, Respondent, and the Chief Disciplinary Counsel. The written decision must clearly state that any appeal of the findings, conclusions, or Sanctions must be made in writing within thirty days of the date of the notice decision. If the panel finds that the Respondent committed professional misconduct, a copy of the charge as defined in Section 2.16 of the Texas Rules of Disciplinary Procedure, and the final judgment shall be transmitted by the Office of the Chief Disciplinary Counsel to the Clerk of the Supreme Court.

2.20 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 to hear and determine any motion to revoke probation which has been filed prior to the end of the term of suspension including any probationary period.~~ 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.

2.21 Appeals by Complainant, Respondent, or Chief Disciplinary Counsel: The Complainant, Respondent, or ~~Chief Disciplinary Counsel~~ Commission for Lawyer Discipline may appeal to the Board of Disciplinary Appeals any findings, conclusions, or Sanctions imposed in a hearing before by judgment, other than an agreed judgment, entered by an evidentiary panel. 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. The Complainant is entitled to the reasonable assistance of the Chief Disciplinary Counsel in any appeal determined by the Chief Disciplinary Counsel to have merit; ~~but the Chief Disciplinary Counsel is not obligated to assist the Complainant in matters considered by Chief Disciplinary Counsel to be without merit.~~

A. An appeal, if taken, must be commenced by the filing of a Notice of Appeal with the Board of Disciplinary Appeals ~~of a Notice of Appeal~~ within thirty days from the Respondent's receipt date of the decision of the evidentiary panel from which the appeal is made. The Notice of Appeal must reflect the intention ~~of the Respondent~~ to appeal and identify the decision from which appeal is perfected.

B. An evidentiary panel's order of disbarment cannot be superseded or stayed. An order of suspension ~~must~~ may be stayed during the pendency of any appeals therefrom if at the time of the evidentiary hearing the Respondent proves, by a preponderance of the evidence, the evidentiary panel finds, upon 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 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.

3.01 Disciplinary Petition: If the Respondent timely files an election for trial de novo in accordance with Section 2.14, the Chief Disciplinary Counsel shall file a Disciplinary Petition in the name of the Commission. The petition must contain:

C. The residence ~~and principal place of practice~~ of the Respondent, or other allegations necessary to fix venue.

3.02 Assignment of Judge: Upon receipt of a Disciplinary Petition, the Clerk of the Supreme Court of Texas shall docket the same and promptly bring the Petition to the attention of the Supreme Court. The Supreme Court shall promptly appoint a ~~senior retired judge~~ or an active district judge who does not reside in the Administrative Judicial ~~Region District~~ in which the Respondent resides to preside in the case. 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 ~~recusal or disqualification as provided by law under the Rules of Civil Procedure and objection, as provided by law, through~~ ~~except that~~ a motion ~~must be~~ filed by either party not later than sixty (60) days from the date the Respondent is served with the Supreme Court's order appointing the judge, provided that in the event of recusal or valid objection, the Supreme Court shall appoint the replacement judge within thirty (30) days of the order of recusal.

3.03 Filing, Service and Venue: After the trial judge has been appointed, the Clerk of the Supreme Court shall promptly forward the Disciplinary Petition and a copy of the Supreme Court's appointing Order to the district clerk of the county of alleged venue. Upon receipt of the Disciplinary Petition and copy of the Supreme Court's Appointing Order, the district clerk shall transmit a copy of the Supreme Court's Appointing Order to the Chief Disciplinary Counsel. 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. ~~All proceedings incident to the trial de novo must take place 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, to the county of Respondent's residence or if the Respondent does not maintain a residence within the State of Texas, then the county where the alleged Professional Misconduct occurred in whole or in part. In all other instances, venue for Disciplinary Actions is Travis County, Texas.~~

3.07 Trial Setting: The court shall set each Disciplinary Action to commence the trial no later than 180 days after the ~~date of service of citation on the Respondent the Disciplinary Petition is filed with the district clerk.~~ No A motion for continuance, resetting, or agreed pass may be granted ~~unless required by~~ in the interests of justice. Mandamus lies to enforce this rule upon the petition of the Chief Disciplinary Counsel or the Respondent.

3.10 Hearing on Sanctions: Relevant Factors: The trial court may, in its discretion, conduct a separate evidentiary hearing on the appropriate Sanction or Sanctions to be imposed. In imposing the Sanction or Sanctions, the court shall consider:

J. ~~The conduct of the Respondent during the pendency of the Disciplinary Proceeding and Disciplinary Action.~~ course of the Committee action.

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 active suspension, the court shall order the surrender of Respondent's law license and State Bar card to Chief Disciplinary Counsel for transmittal to the Clerk of the Supreme Court, shall enjoin the Respondent from practicing law or from holding himself or herself out as an attorney capable of practicing law during the period of disbarment or active suspension and shall enjoin the Respondent from seeking to collect or accepting any attorney's fees directly or indirectly other than those fees already earned prior to date of disbarment or active 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 suspension previously ordered or to reinstate an attorney previously disbarred.

3.13 Suspension Revocation Procedure: If all or any part of a suspension from the practice of law is probated under the Part III, the court retains jurisdiction during the full term of suspension, including any probationary period, to hear a motion to revoke probation to hear and determine any motion to revoke probation which has been filed prior to the end of the term of suspension including any probationary period. 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. A judgment of suspension shall may be stayed during the pendency of any appeals therefrom, if the district court finds Respondent files a motion seeking a stay within thirty days of the date of the judgment is signed and, upon hearing thereof within the time the court has plenary power to hear the same, establishes by a preponderance of the evidence, upon 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. 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.

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. ~~The advisory members and their alternates or designees are non-voting ex-officio members of the Commission. They may attend closed sessions only with the express consent of the Commission; however such advisory members and alternates shall not participate in the discussion of individual cases and shall be bound by the same rules of confidentiality as the members of the Commission. The commission may invite any other such persons as it deems appropriate, notwithstanding any other prohibition by the Open Meetings Act or otherwise; however such invitees shall not participate in the discussion of individual cases and shall be bound by the same rules of confidentiality as members of the Commission.~~ No member of the Commission 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, 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.

4.06 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, except where such rights are expressly hereby granted to a Committee. Each District Grievance Committee possesses all rights characteristically reposed in a client by the common law of this State relative to Complaints being handled by such District Grievance Committee until either: (i) twenty days after a Just Cause determination has been made; or (ii) a Disciplinary Action is filed in a court of competent jurisdiction.

PART VIII

Compulsory Discipline

8.01 **Generally:** (a) When an attorney licensed to practice law in Texas has been convicted of an **Intentional Serious Crime** or has been placed on probation for an **Intentional Serious Crime** with or without an adjudication of guilt, the Chief Disciplinary Counsel shall initiate a Disciplinary Action seeking compulsory discipline pursuant to this part. **For purposes of compulsory discipline, an order of deferred adjudication shall be treated as a conviction.** The completion or termination of any term of incarceration, probation, parole, or any similar court-ordered supervised period does not bar action under ~~this Part VIII~~ of these rules as hereinafter provided. **A compulsory action may be initiated regardless of whether the attorney's Texas law license has been administratively suspended for failure to pay State Bar dues, occupational tax, or otherwise.**

(b) 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~~ ~~8.02 **Commencement of Suit: Jurisdiction. Petition:** 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 conviction, 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 defendant convicted, adjudicated guilty or who received probation with or without an adjudication of guilt for such **Intentional Crime**; and seek the appropriate discipline. Uncontroverted affidavits that the attorney is the same person as the defendant convicted are *prima facie* evidence of those facts.~~

~~8.023 **Conclusive Evidence:** In any Disciplinary Action brought under this part, the judgment record of conviction or order of deferred adjudication from the criminal proceeding is conclusive evidence of the attorney's guilt. Neither the conviction nor the adjudication of guilt are subject to collateral attack.~~

8.04 **Procedure Hearing:** The Board of Disciplinary Appeals shall hear and determine all questions of law and fact.

(a) ~~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 regarding the status of the attorney's Texas law license is licensed to practice law in Texas, the Board of Disciplinary Appeals shall immediately determine whether the attorney has been convicted of an Intentional Serious 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 provided by law. The Board of Disciplinary Appeals may, in its discretion, review the record of the criminal conviction upon which the compulsory action is based to establish whether the crime is a Serious crime.~~

~~(b) 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 date that the attorney is served; 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 Serious Crime is sentenced to any period of confinement or imprisonment which is not fully probated, 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 Section 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, 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 Criminal Sentence Fully Probated: (a) 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 Board of Disciplinary Appeals may either disbar the attorney or suspend the attorney's license to practice law. Any suspension shall be for a term identical to the term of the criminal probation as originally assessed, which two terms need not run concurrently. the attorney's license to practice law shall be suspended during the term of probation.~~

(b) The Board of Disciplinary Appeals may, in its discretion, receive evidence in mitigation or aggravation in determining whether to suspend or disbar an attorney provided, however, that neither the conviction nor the adjudication of guilt are subject to collateral attack.

(c) ~~If an attorney is suspended during the term of probation, the~~ Any suspension shall be conditioned upon the attorney's satisfactorily completing the terms of ~~the criminal~~ probation. If ~~the criminal~~ probation is revoked, the attorney shall be disbarred upon the Chief Disciplinary Counsel filing with the Board of Disciplinary Appeals certified copies of court documents showing that the ~~criminal~~ probation has been revoked. A Final Judgment of Disbarment shall be entered without a hearing unless the attorney, within ten days following service of the motion pursuant to Rule 21a, Texas Rules of Civil Procedure, files a verified denial contesting the finality of the revocation, in which event the Board of Disciplinary Appeals will as soon as practicable conduct a hearing to determine the issue. ~~An early termination of probation does not result in reinstatement until the entire period, as originally assessed, has expired. An early termination of probation does not automatically result in reinstatement; however, an attorney may petition for reinstatement upon an early termination of probation, which reinstatement shall be discretionary with the Board of Disciplinary Appeals.~~

8.07 Early Termination Interlocutory Suspension and Final Judgment: ~~An early termination of criminal probation shall have no effect on any judgment entered pursuant to Part VIII. (a) When an attorney has been convicted of a Serious Crime and has appealed the conviction, he or she shall be suspended from the practice of law in Texas during the appeal notwithstanding that the criminal probation has been completed. Any suspension ordered during the appeal of a criminal conviction is interlocutory and immediately terminates if the conviction is set aside, vacated, or reversed.~~

(b) ~~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 with the Board of Disciplinary Appeals when the conviction is final. For purposes of this part, a criminal conviction is final when the attorney exhausts all appeals, discretionary with the appeals court or otherwise. The finality of the judgment is not affected by discretionary motions or writs. If the motion for final judgment 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, Texas Rules of Civil Procedure, the attorney 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.~~

10.04 Acceptance of Resignation and Notification: Any motion to resign in lieu of Disciplinary Action 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 chair of the

movant's ~~District Grievance~~ Committee, the Commission, and the Complainant, if any, shall be notified by the Chief Disciplinary Counsel of the Court's disposition of such motion.

11.01 Eligibility and Venue: A disbarred person or a person who has resigned in lieu of Disciplinary Action 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 Disciplinary Action, petition the district court of the county of his or her residence for a ~~judgment providing for reinstatement upon compliance with the conditions set out in these rules~~; 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 Disciplinary Action is a nonresident of the State of Texas, then the petition shall be filed in Travis County, Texas.

11.02 Petition for Judgment Providing 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 Action was adjudicated and the identity of the Committee before whom the Just Cause hearing was held.
- 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 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.~~
~~A statement of all funds paid by the Client Security Fund to any former client of petitioner's based on any conduct of Petitioner, whether or not related to the Disciplinary Action that resulted in his or her disbarment or resignation, and a statement, with attached proof, that petitioner has repaid the Client Security Fund. The Client Security Fund has the authority to accept less than the full amount of its claim; however, any such settlement shall be set forth in the petition for reinstatement.~~

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 the entry of a judgment providing for reinstatement of petitioner.

G. A listing of the petitioner's occupations from the date of disbarment or resignation, including the names, 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, 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, including a statement as to whether he/she was held in contempt of court.

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 describing any proceeding or inquiry pending on or initiated 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 action which, if proven, could lead to 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 ~~the entry of a judgment providing for his or her reinstatement.~~ The court shall deny the petition for reinstatement if it contains any false statement of a material fact ~~(any fact required to be included in the petition)~~ 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. ~~A judgment of reinstatement rendered by default is void.~~

11.05 **Relevant Factors to be Considered:** In determining the petitioner's fitness entitlement to the entry of an order providing 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 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, including his timeliness in making restitution to all persons financially harmed as a result of any acts of Professional Misconduct and to the Client Security Trust Fund for any payments made as a result of such acts of petitioner's.
- G. Any other evidence relevant to the issues of the petitioner's fitness request for reinstatement 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 H~~ of the Rules Governing Admission to the Bar of Texas, ~~including compliance with each provision of Rule II, in effect as of the date upon which judgment authorizing reinstatement is entered.~~ The judgment shall;

A. ~~direct the Board of Law Examiners to admit the Petitioner to a regularly scheduled bar examination upon petitioner's filing of an application for admission to the bar of Texas in accordance with the board's rules and procedures relating to the examination of persons who have not been previously been licensed as lawyers in Texas or any other state.~~

B. ~~provide that the petitioner is subject to the same character and fitness investigation and standards as any other applicant for admission who has not been previously licensed in Texas or in any other state;~~

C. ~~provide that the petitioner shall be reinstated as an attorney in Texas upon certification by the Board of Law Examiners to the Supreme Court of Texas that Petitioner met all requirements for admission to the Bar of Texas set forth in the Rules Governing Admission to the Bar of Texas within eighteen months from the date of the judgment providing for reinstatement.~~

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 ~~a judgment providing 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; ~~provided however that any provisions which attempt to limit the authority of the Board of Law Examiners to carry out its duties under the Rules Governing Admission to the Bar of Texas shall be void.~~

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. In the event the judgment does not contain the provisions required in Section 11.06 A, B and C or contains provisions which are inconsistent with those provisions, the Commission shall perfect an appeal and may not dismiss such 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 providing for 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.

12.02 **Procedure:** Should the investigatory panel of a Committee find that an attorney is suffering from a Disability, the panel shall certify that finding and forward the entire record immediately to the Board of Disciplinary Appeals. Upon receipt of the record, 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, or a Master's degree in social work with an advanced clinical practitioner license; 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.

12.06 **Reinstatement After Disability Suspension:** 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 in the county, immediately prior to suspension, of the ~~suspended attorney's Respondent's residence principal place of practice~~ of the Respondent. ~~If Respondent had no residence in Texas, the venue shall be Travis County.~~

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

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 Respondent or the Commission shall have the right to a jury trial ~~in the event the action has been filed in a district court~~ upon timely payment of the required fee.

13.01 Notice of Attorney's Cessation of Practice: When an attorney licensed to practice law in Texas dies, resigns in lieu of discipline, becomes takes inactive status, 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 (together with information identifying the matter) shall be mailed by the attorney to all clients, former clients, opposing counsel, courts, and agencies with which the attorney has matters pending, malpractice insurers, former clients having reason to be informed, and any other person or entity having reason to be informed of the cessation of practice. In the event a client or former client has secured representation by another attorney who has agreed to assume responsibility, the attorney giving the notice of cessation of practice shall immediately surrender that client or former client's file, papers, and property to such other attorney at the client's direction. If the attorney dies, or has a mental or emotional Disability, the notice shall be given by the personal representative of the attorney or by any person having lawful custody of the files and records of the 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. In the event the judgment of suspension has been stayed pending appeal, the requirement of giving notice is also stayed until the judgment of suspension goes into effect.

15.01 **Subpoena Power:** Chief Disciplinary Counsel, or Respondent, or in hearings before the Board of Disciplinary Appeals where evidence is taken, the Board of Disciplinary Appeals 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 Subpoenas for investigatory panel proceedings and evidentiary panel proceedings may be issued by any Committee member. Subpoenas for hearings before the Board of Disciplinary Appeals where evidence is taken may be issued by the Executive Director of the Board of Disciplinary Appeals issued by the chair of the panel. The party seeking the subpoena shall submit it in a proper form and is responsible for securing service. Any contest between the Chief Disciplinary Counsel and the Respondent about the materiality of the testimony or production sought by a subpoena for evidentiary panel proceedings shall be determined by the chair of the panel, and is subject to review. Any contest between the Chief Disciplinary Counsel and the Respondent about the materiality of the testimony or production sought by a subpoena for a hearing before the Board of Disciplinary Appeals where evidence is taken shall be determined by the Board of Disciplinary Appeals, and is subject to review. Subpoenas must be served on witnesses personally or in accordance with Rule 21a, Texas Rules of Civil Procedure, except that no tender of money shall be required under these rules. Proof of service shall be by certification of the server by the return receipt, if service is by courier-receipted delivery, or by certified or registered mail, or by the message confirmation record if service is by facsimile machine. 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.

15.02 **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 either "In re: Hearing Before The District _____ Grievance Disciplinary Committee" or "In re: Hearing Before The Supreme Court of Texas Board of Disciplinary Appeals." The court shall order a time, date, and place for the hearing and shall notify Chief Disciplinary Counsel, 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 Chief Disciplinary Counsel, 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.

15.03 **Enforcement of Judgments:** The following judgments have the force of a final judgment of a district court: consent judgments entered into by the Respondent and an investigatory panel, consent judgments entered into by the Respondent and an evidentiary panel, final judgments of an evidentiary panel, and judgments entered by the Board of Disciplinary Appeals. To enforce a judgment, the Chief Disciplinary Counsel may apply to a district court in either the county where the judgment was entered or 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.

15.04 **Effect of Related Litigation:** The processing of an Inquiry, 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.

15.07 **Effect of Time Limitations:** The time periods provided in Sections 2.09, 2.10, ~~2.15(B), 2.15(F) 2.16(B), 2.16(B)(1)~~, 2.19, 2.20, 3.04, 4.05, 7.11, 9.02, 10.02 and 11.01 are mandatory. All other time frames are directory only and the failure to comply with them does not result in the invalidation of an act or event by reason of non compliance with these time limits.

15.09 **Residence and Notice of Change of Address:** 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. ~~After the writing is filed and the Respondent has been delivered a copy of the Complaint, Complainant and Respondent shall have the duty to notify the Committee of any change of residence or change of address. No ruling or action of the Committee shall be invalid when the Respondent and/or Complainant fails to comply with this rule.~~

15.10 **Privilege:** ~~All privileges of the attorney-client relationship shall apply to all communications, written and oral, and all other materials and statements between to or from the Committee the Commission Chief Disciplinary Counsel, and the Complainant, the Respondent, and others directly involved in the filing, screening, investigation, and disposition of inquiries and complaints are absolutely privileged his or her client(s) subject to the provisions of Section 6.08.~~

15.11 **Immunity:** Communications to the Chief Disciplinary Counsel or grievance ~~committee~~ **Committee** relating to attorney misconduct or disability and testimony given at any disciplinary or ~~District Professionalism Enhancement Committee~~ proceeding shall be absolutely privileged and no lawsuit predicated thereon may be instituted against any complainant or witness. All members of the Commission, the Chief Disciplinary Counsel and ~~his or her staff~~ (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, and 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.

15.13 Restrictions on Imposition of Certain Sanctions:

A. Private Reprimands shall be prohibited

- (1) In any judgment, including an agreed judgment, entered by the Court in any Trial De Novo in District Court as provided for in Part III of these rules, and
- (2) In any decision, including an agreed judgment, entered by an evidentiary panel as provided for in Part II of these rules.
- (3) In any agreed judgment entered by an investigatory panel of the grievance if :

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

B. The Respondent has previously received two (2) or more private reprimands, whether or not for violations of the same disciplinary rule, within the preceding ten (10) years; or

C. The misconduct includes barratry, theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or

D. The misconduct has resulted in substantial injury to the client, the public, the legal system or the profession; or

E. There is likelihood of future misconduct by Respondent; or

F. The Respondent's misconduct was an intentional violation of the Texas Disciplinary Rules of Professional Conduct or, if applicable, the Texas Code of Professional Conduct; or

G. A Disciplinary Action has been initiated as a result of such misconduct.

A-B 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 (2) or more public reprimands whether or not for violations of the same disciplinary rule within the preceding five (5) year period.

B-C Fully probated suspensions shall not be utilized if:

- (1) A public reprimand or fully probated suspension, including suspension probated in full or in part, 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 (2) or more fully probated suspensions, including suspension probated in full or in part, for any rule violation within the preceding five (5) year period; or
- (3) The Respondent has previously received two (2) 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.

E-D In the event that a fully probated suspension is not available under this rule, any sanction imposed shall be for no less than thirty (30) days of active suspension.