

# IN THE SUPREME COURT OF TEXAS

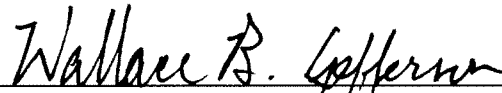
Misc. Docket No. 09-9150

## ORDER ADOPTING AMENDMENTS TO TEXAS RULES OF DISCIPLINARY PROCEDURE 2.16 AND 6.08

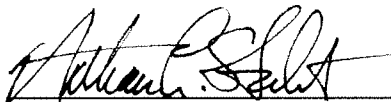
**ORDERED** that:

1. Texas Rules of Disciplinary Procedure 2.16 and 6.08 are amended as follows.
2. These changes, with any modifications made after public comments are received, take effect January 1, 2010. Comments may be submitted to the Court in writing on or before November 30, 2009. Comments should be directed to Kennon L. Peterson, Rules Attorney, at P.O. Box 12248, Austin TX 78711, or [kennon.peterson@courts.state.tx.us](mailto:kennon.peterson@courts.state.tx.us).
3. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*; and
  - c. cause a copy of this Order to be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>.

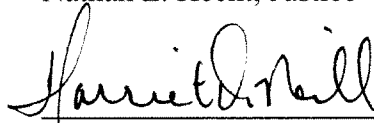
In Chambers, this 9<sup>th</sup> day of September, 2009.



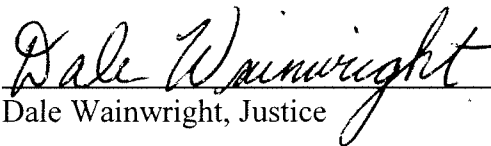
Wallace B. Jefferson, Chief Justice



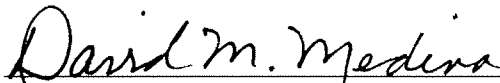
Nathan L. Hecht, Justice



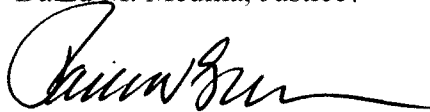
Harriet O'Neill, Justice



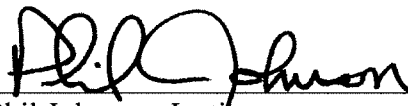
Dale Wainwright, Justice



David M. Medina, Justice



Paul W. Green, Justice



Phil Johnson, Justice



Don R. Willett, Justice

## TEXAS RULES OF DISCIPLINARY PROCEDURE

### 2.16. Confidentiality

A. ~~Disciplinary Proceedings are strictly confidential and not subject to disclosure, except by court order or as otherwise provided in this Rule 2.16. All members and staff of the Office of Chief Disciplinary Counsel, Board of Disciplinary Appeals, Committees, and Commission shall maintain as confidential all Disciplinary Proceedings and associated records, except that:~~

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

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

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

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

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

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

~~B. The 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 that are discoverable elsewhere are not made confidential merely because they are discussed or introduced in the course of a disciplinary proceeding.~~

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

~~E. If the Evidentiary Panel finds that professional misconduct has occurred and imposes any sanction other than a private reprimand, all information, documents, statements and other information coming to the attention of the Evidentiary Panel shall be, upon request, made public. However, the Chief Disciplinary Counsel may not disclose work product or privileged attorney-client communications without the consent of the client.~~

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

#### **6.08. Access to Confidential Information**

No officer ~~(except the General Counsel when acting in the capacity of Chief Disciplinary Counsel)~~ or Director of the State Bar or any appointed adviser to the Commission shall have access to any confidential ~~records, information, or proceedings~~ relating to any Disciplinary Proceeding, Disciplinary Action, or Disability suspension. The Office of Chief Disciplinary Counsel may provide appropriate this information to authorized agencies investigating qualifications for admission to practice, attorney discipline enforcement agencies, law enforcement agencies, the State Bar's Client Security Fund, the State Bar's Lawyer Assistance Program, the Commission on Judicial Conduct and the Supreme Court's Unauthorized Practice of Law Committee and its subcommittees, and the Commission on Judicial Conduct.