

IN THE SUPREME COURT OF TEXAS

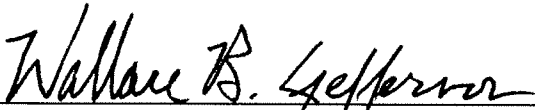
Misc. Docket No. 09- **9034**

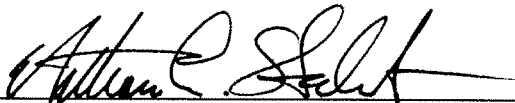
ORDER ADOPTING AMENDMENTS TO TEXAS RULE OF DISCIPLINARY PROCEDURE 6.06 AND BOARD OF DISCIPLINARY APPEALS INTERNAL PROCEDURAL RULES

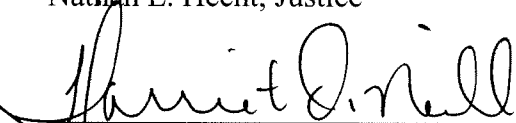
ORDERED that:

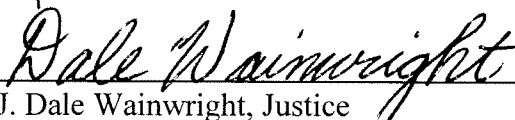
1. Texas Rule of Disciplinary Procedure 6.06 and the Internal Procedural Rules of the Board of Disciplinary Appeals (BODA) are amended as follows.
2. These changes, with any modifications made after public comments are received, take effect July 1, 2009. Comments may be submitted to the Court in writing on or before June 1, 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.
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*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. cause a copy of this Order to be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>.

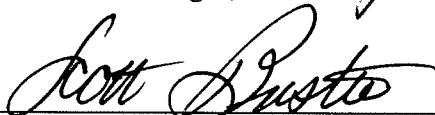
In Chambers, this 24th day of February, 2009.

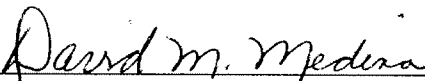

Wallace B. Jefferson, Chief Justice



Nathan L. Hecht, Justice

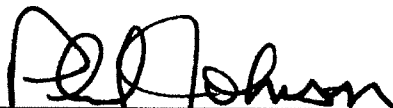

Harriet O'Neill, Justice

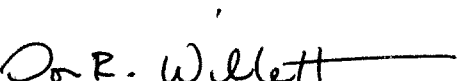

J. Dale Wainwright, Justice


Scott Brister, Justice


David M. Medina, Justice


Paul W. Green, Justice


Phil Johnson, Justice


Don R. Willett, Justice

TEXAS RULES OF DISCIPLINARY PROCEDURE

6.06. Publication of Court and Board of Disciplinary Appeals Opinions

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

A. Court Opinions: Notwithstanding the Texas Rules of Appellate Procedure, in any case arising out of a Complaint, an opinion of a court of appeals has precedential value regardless of its designation.

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

Comment to 2009 change: Rule 6.06 is divided into two subdivisions. Subdivision A is amended to remove an outdated reference to the official reporter system. Subdivision A is also amended to be consistent with amendments to Texas Rule of Appellate Procedure 47, intended to prospectively discontinue designating opinions as either “published” or “unpublished.” But unlike the erroneously designated opinions addressed in Texas Rule of Appellate Procedure 47.7(b), the erroneously designated opinions addressed in this rule have precedential value from 1992 on. Subdivision B addresses Board of Disciplinary Appeals (BODA) opinions and includes a distribution provision similar to Texas Rule of Appellate Procedure 47.3. This change provides for the publication of BODA opinions issued in any type of case, whether pursuant to BODA’s original or appellate jurisdiction.

BODA INTERNAL PROCEDURAL RULES

Rule 1.16 BODA Opinions

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

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

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

Rule 4.10 Decision and Judgment

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

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

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

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

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