

ORDER
of the
Supreme Court of Texas

**RULES OF PROCEDURE FOR
DISTRICT DISABILITY COMMITTEE HEARINGS,
TEXAS RULES OF DISCIPLINARY PROCEDURE**

It is ordered by the Supreme Court that the following Procedural Rules for District Disability Committee Hearings held pursuant to Texas Rules of Disciplinary Procedure Part XII, Section 12.03, be and are hereby adopted:

INTERNAL OPERATING PROCEDURES FOR DISABILITY SUSPENSIONS

If the investigatory panel of the committee finds just cause to believe the Respondent is suffering from a disability and the Board of Disciplinary Appeals has reviewed the record and the finding on a substantial evidence standard confirming the investigatory panel, the following shall be rules to be applied by the District Disability Committee in de novo proceedings described in part 12, Rule 12.03 of the Texas Rules of Disciplinary Procedure:

HEARING ORDER

(1) Duty of Chief Disciplinary Counsel

Upon being notified that the committee's recommendation was affirmed by the Board of Disciplinary Appeals, the Chief Disciplinary Counsel shall within 20 days file with the District Disability Committee and then serve upon the Respondent by certified mail a Proposed Hearing Order containing (a) a list of names and addresses of all witnesses expected to be called to testify before the panel and (b) a list of exhibits expected to be presented to the panel at the hearing.

(2) Duty of the Respondent

The Respondent shall, within twenty days after the date of notification by the Board of Disciplinary Appeals that the Board has affirmed the grievance committee's finding, file with the chair of that District Disability Committee and serve the Chief Disciplinary Counsel by certified mail a Proposed Hearing Order including (a) a list of names and addresses of all witnesses expected to be called to testify before the panel and (b) a list of exhibits expected to be presented to the panel at the hearing. Failure to timely file the proposed

hearing order will not affect the responsibility of the District Disability Committee to issue a hearing order.

(3) Duty of the District Disability Committee

The District Disability Committee chair shall then have the right to adopt either the Chief Disciplinary Counsel's Proposed Hearing Order, the Respondent's proposed hearing order, or an order of his or her own. The order will contain a date, time, and place for the hearing. That order may contain provisions requiring a physical or mental examination of the Respondent. The order should then be served by certified mail to both the Respondent and Chief Disciplinary Counsel.

PROVISIONS FOR PHYSICAL OR MENTAL EXAMINATIONS

The District Disability Committee shall have the right to order the Respondent to submit to a physical or mental examination by a physician or psychologist. The order may be made by notice to the person to be examined and shall specify time, place, manner, and scope of the examination, along with the person or persons by whom it is to be made as selected by the Chief Disciplinary Counsel. The physician or psychologist shall deliver to the Respondent and Chief Disciplinary Counsel a copy of a detailed written report of the examining physician or psychologist setting out findings, including results of all tests made, diagnoses and conclusions, together with like reports of all other examinations for the same condition. If the District Disability Committee orders the Respondent to submit to an examination and the Respondent fails to do so at the time and place and in the manner so ordered, the finding of the local grievance committee as affirmed by the Board of Disciplinary Appeals shall be final, and the Respondent will be deemed to be suffering from a disability as defined in Rule 1.06(h) of the Texas Rules of Disciplinary Procedure.

ABILITY TO COMPEL ATTENDANCE

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 the Chief Disciplinary Counsel, by requesting a subpoena be issued by the committee chair.

RIGHT TO COUNSEL

The Respondent may have counsel present during the hearing. The Respondent and the Chief Disciplinary Counsel may, if they so choose, confront witnesses. Respondent does not have an absolute right to counsel, and continuances will not be granted solely to allow Respondent additional time to obtain counsel.

LIMITED DISCOVERY

In the sole discretion of the District Disability Committee, limited discovery is permissible upon a clear showing of good cause

and substantial need. The parties seeking Discovery must file with the District Disability Committee a verified written request for Discovery showing good cause and substantial need no later than twenty days after the notification of the Board's affirmation of the District Grievance Committee's finding of disability. If good cause and substantial need are demonstrated, the District Disability Committee shall by written order permit the Discovery, including in the Order limitations or deadlines on the Discovery. Such Discovery, if any, as may be permitted, must be conducted by methods provided in 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 a District Disability Committee on a Discovery matter may be reviewed only on appeal of the entire case. A reversal of the case may be based upon the granting or denial of a Discovery request without a showing of material, unfairness, or harm.

ADMISSIBILITY OF EVIDENCE

The chair of the District Disability Committee 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 the admission or exclusion of evidence shall be in the sole discretion of the chair of the District Disability Committee, and no ruling on evidence shall be a basis for reversal solely because it fails to strictly comply with the Texas Rules of Civil Evidence.

BURDEN OF PROOF

The burden of proof is on the Chief Disciplinary Counsel to prove that the Respondent is suffering from a disability by a preponderance of the evidence. A verbatim record of the proceedings will be made by a certified shorthand recorder. In the event of an appeal from the District Disability Committee to the Supreme Court, the party initiating the appeal shall pay the cost of preparation of the transcript. Such costs shall be taxed at the conclusion of the appeal.

CONFIDENTIALITY

All proceedings before the District Disability Committee are not open to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure, except as may be required should there be an appeal to the Supreme Court by either the Chief Disciplinary Counsel or the Respondent.

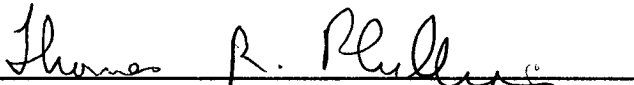
TIME LIMITATIONS

Such proceedings shall begin and conclude no earlier than thirty days from the time that the Board of Disciplinary Appeals affirms the finding of the district grievance committee nor later than ninety days from that finding; however, failure to do so does not


affect the jurisdiction of the District Disability Committee to act.


These rules shall be effective immediately.

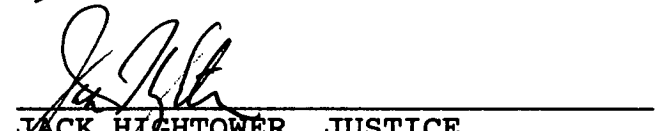
In Chambers, this 23rd day of December, 1992.


THOMAS R. PHILLIPS, CHIEF JUSTICE

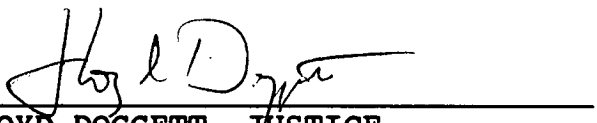

RAUL A. GONZALEZ, JUSTICE


OSCAR H. MAUZY, JUSTICE



EUGENE A. COOK, JUSTICE


JACK HIGHTOWER, JUSTICE


NATHAN L. HECHT, JUSTICE


LLOYD DOGGETT, JUSTICE


JOHN CORNYN, JUSTICE


BOB GAMMAGE, JUSTICE