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THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY THE SUPREME COURT OF TEXAS

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July 27, 2007

Honorable Justice J. Dale Wainwright
Honorable Justice Scott Brister
Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

Re: 2007 Report of the Grievance Oversight Committee

Dear Justice Wainwright and Justice Brister:

I write in response to the Court's invitation for the Board of Disciplinary Appeals to submit any further comments on the Report compiled by the Court's Grievance Oversight Committee.

During discussions about various other matters with the Court's liaison to the Board, Justice Wainwright, the topic of the effect of published BODA opinions arose. The Board has considered that issue, and submits the attached **revised** proposed revisions to Texas Rule of Disciplinary Procedure 6.06 and BODA Internal Procedural Rule 1.16. There is one addition to proposed revised Disciplinary Procedure Rule 6.06, a sentence that would clarify that, in lawyer discipline cases tried in district court, BODA opinions would have persuasive, rather than precedential, effect.

Other than this revision to the proposed Rule revisions submitted to the Court with my letter of June 29, 2007, the Board has no further comments to submit regarding the Grievance Oversight Committee's Report.

The Board appreciates both the invitation to submit further comments and the Court's consideration of the information provided in the earlier letter.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Watkins".

Karen L. Watkins

KLW

Enclosed proposed revision to Rule 6.06 and proposed Rule 1.16

Hon. Justice Wainwright

Hon. Justice Brister

July 27, 2007

Page 2

- c: Mr. Gib Walton, President, State Bar of Texas
 - ✓ Mr. Gaines West, Chair, Grievance Oversight Committee
 - Ms. Betty Blackwell, Chair, Commission for Lawyer Discipline
- With enclosed revised proposed revisions to Rule 6.06 and proposed IPR 1.16

Proposed Revision to the Texas Rules of Disciplinary Procedure
Part VI
Public Information and Access

Note: This revision requires publication of BODA opinions issued in any type of case, whether pursuant to its original or appellate jurisdiction, but does not require BODA to issue an opinion in any type of matter consistent with current rules.

Rule 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 and all opinions issued by the Board of Disciplinary Appeals must be published in the official reporter system. The opinions of the Board of Disciplinary Appeals are persuasive, not precedential, in disciplinary proceedings tried in district court. This provision takes precedence over the applicable Texas Rules of Appellate Procedure.

Proposed New
Board of Disciplinary Appeals Internal Procedural Rule

Rule 1.16 Opinions. BODA may render judgment in any case with or without written opinion. BODA opinions shall be published in the official reporter system in accordance with the Texas Rules of Disciplinary Procedure and the Texas Rules of Appellate Procedure. Decisions in appeals from grievance classification decisions under TRDP 2.10 and Part 3 of these Internal Procedural Rules are not final dispositions concerning professional misconduct and are not cases for purposes of publication.

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June 29, 2007

Honorable Justice J. Dale Wainwright
Honorable Justice Scott Brister
Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

Re: 2007 Report of the Grievance Oversight Committee

Dear Justice Wainwright and Justice Brister:

The Board of Disciplinary Appeals has received and studied the comprehensive Report compiled by the Court's Grievance Oversight Committee. I am writing on behalf of the Board for three reasons.

First, the Board appreciates the Committee's obvious expenditure of time, thought and good will in researching and preparing the Report. It is clear that the members of the Committee have spent a great deal of time considering many issues, and have had as their goal the production of an objective, informative, helpful Report. The Board also appreciates having been given an opportunity to comment on the various issues before the Committee finalized its Report. The process will operate best if the Committee and the Board continue to enjoy a cooperative and open relationship.

Second, although the Board may decide to respond further to the Report after our en banc meeting on July 12, we felt that one item in the Report required immediate comment. In Section V. B. 2., the Report includes the following sentence: "No reporting mechanism has been adopted by BODA to inform or educate either the public or lawyers concerning the classification decisions that BODA regularly makes." The Board does, in fact, employ various means of informing and educating lawyers concerning classification decisions. For example, a number of current and former Board members – including Faye Bracey, Jack Balagia, Jim Frost, Kathy Owens, Paul Clote, Bill Greenhill, Clement Osimetha and myself, as well as the Committee's current chair, Gaines West – have added to the time we spend doing the work of the Board by speaking at various continuing legal education events and, in doing so, pointing out the issues presented in classification appeals and explaining the manner in which those issues are resolved. In addition, the Board continues to identify and promote speaking opportunities (such as with the Texas District and County Attorneys Association) to facilitate a broader understanding of the Board's role, and the standards by which Board decisions are made.

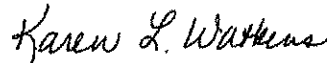
We believe that the Committee may have meant that there is no mechanism – such as the issuance of an opinion – for writing about classification decisions. This is true. The Board has previously considered and continues to consider the feasibility and potential helpfulness of issuing some form of writing about the Board's classification decisions. While each classification decision generally has little significance to anyone other than the parties to each matter, in the aggregate, the thousands of classification decisions made by the Board could be considered indicative of the Board's interpretation of various Rules of Professional Conduct. However, issuance of any writing would be problematic because (1) each decision so heavily depends on the sometimes scant facts alleged by the complainant, (2) facts vary so greatly from one complaint to the next, and (3) it is almost impossible consistently to strike the correct balance between including sufficient specificity to provide guidance and obscuring enough facts to maintain the mandated confidentiality. In addition, comparing a possible writing in the classification context with an opinion in the context of an appeal or a compulsory discipline matter is akin to comparing a visit to one's family physician with a hospital stay for major surgery: classification decisions are made to determine whether further investigation is warranted, not to decide whether a particular lawyer has committed an act of misconduct and, if so, to impose an appropriate sanction. We recognize that there are those who believe that the Board should write on these matters; the Board will continue to consider whether it believes that any form of writing would be either feasible or helpful.

Third, the Board greatly appreciates the Committee's recommendation that the Court authorize West Publishing to publish the Board's opinions in the Southwestern Reporter series. This will greatly improve access to our opinions, which currently are available only from the Board's website. To facilitate this publication process, the Board has taken the liberty of proposing the attached revision to Texas Rule of Disciplinary Procedure 6.06 and the attached new BODA Internal Procedural Rule.

Again, the Board greatly appreciates the collaborative approach that the Committee has taken and respects the Committee's dedication, which is reflected in the amount of work the Committee must have done to generate such a comprehensive Report.

The Board also appreciates the Court's consideration of the information provided in this letter.

Sincerely,



Karen L. Watkins

KLW

Enclosed proposed revision to Rule 6.06 and proposed Rule 1.16

c: ✓ Mr. Gib Walton, President, State Bar of Texas
✓ Mr. Gaines West, Chair, Grievance Oversight Committee
Ms. Betty Blackwell, Chair, Commission for Lawyer Discipline

With enclosed proposed revised procedural rule and internal operating rule

Proposed Revision to the Texas Rules of Disciplinary Procedure
Part VI
Public Information and Access

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