

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

September 29, 2016

Ms. Nina Hess Hsu
General Counsel
Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

Dear Ms. Hsu:

The Commission for Lawyer Discipline and Chief Disciplinary Counsel have reviewed the Grievance Oversight Committee's 2016 Report to the Court and welcome the opportunity to provide comment. The GOC's continued commitment to the improvement of the disciplinary system is evident in its comprehensive report and recommendations.

The Commission and CDC agree that it would be beneficial to provide additional explanation for dismissed grievances at the classification stage. In line with both GOC and Sunset Commission recommendations, CDC plans on revising its notification letters to include additional categories for dismissal and will include contact information for the classification lawyer who handled the grievance. The approval of another classification attorney in this year's budget was a needed additional resource that will support this work toward more transparency.

We also appreciate GOC's recognition of the work accomplished by the Commission and CDC in the area of immigration. This is a complex area of law, oftentimes undertaken by attorneys who lack the necessary specialized skill set or who take advantage of this vulnerable segment of society. CDC has developed a list of immigration specialists who are consulted during the classification, investigation and litigation of immigration related matters and CDC has consistently included in its staff training segments devoted to this area of law. In addition, State Bar Board members are advised at orientation, board meetings, and during the nomination process of the need for immigration lawyers to serve on local grievance committees. CDC has also found that the cross-training of its classification lawyers in various subject matters encourages more collaboration that leads to consistency in decisions and also protects the process when staff vacancies occur. Consultation of immigration experts by local grievance committee panels could be useful for cases considered by summary disposition panels but would not be feasible for panels conducting evidentiary hearings as they could only consider evidence offered and admitted at trial.

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The Commission and CDC strive to deliver the best and most comprehensive training for all grievance committee members. In addition to in-person orientation sessions, CDC provides a flash drive or CD containing the relevant rules, updated procedural guide, staff roster, the Commission's annual report, PHI policy, and online training sessions developed specifically for the grievance committee members such as "Common Rule Violations," and "What to Expect in an Evidentiary Panel Hearing." One region conducted a mock evidentiary hearing at its training sessions which allowed members to take part in a deliberation, fact finding and sanction process. CDC is also considering sending periodic emails regarding upcoming ethics related CLE presentations which members can access free of charge. We understand the concern expressed by some regarding the conducting of summary disposition dockets telephonically, but the majority of members seem to prefer this approach. In addition, CDC frequently schedules summary disposition cases when an evidentiary panel hearing is scheduled which requires the presence of the panel members. However, CDC will explore the availability and viability of computer/video participation and will also remind members of the option to conduct summary disposition dockets in person if desired.

The public's knowledge of the grievance system and its accessibility is critical to maintaining confidence and trust in the legal profession. CDC recently completed its annual distribution in both English and Spanish of grievance forms, grievance brochures, CAAP brochures and small posters advising individuals about the system. This information is mailed to district and county clerks, county jails, law libraries, legal aid organizations, local bar associations, prisons, immigration detention centers and certified immigration non-profit organizations. CDC also produced a "How to File a Grievance" video tutorial for the State Bar's website which provides step-by-step instructions on the filing of a grievance and the process. Further, a grievance helpline already exists and is handled through CAAP which provides information about the process. We agree that public service announcements can also be effective and CDC has begun the process of developing content and evaluating placement and costs associated with distributing and/or airing announcements.

Improvements to the online grievance process and the grievance form itself are always under consideration as the Commission and CDC recognize the importance of continuing to improve ease of access to the system and a filing process that is not burdensome or complicated. In addition, CDC strives to ensure that meritorious complaints are not dismissed on technicalities or a lack of an understanding of the process. CDC has provided an onscreen acknowledgment of the filing of an online grievance since June of 2013. And, this past June CDC added additional language about the 30 day classification period to clarify this initial stage in the process along with a telephone number to call for further inquiries. The information requested on the current grievance is a result of CDC experience over the years in obtaining the most complete information for contacting complainants and avoiding duplicative grievances; but CDC will review the current form for further clarification suggested by GOC.

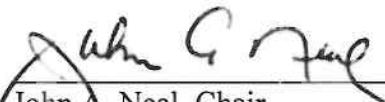
Barratry or in-person solicitation continues to be a challenge for the reasons stated in GOC's report. For several years, Deputy Counsel, James Ehler, has served as the point person statewide for all investigations and litigation in this area and these cases are tracked in the system. CDC has also worked with local law enforcement and district attorney offices to help combat this criminal activity through the sharing of information and testifying in cases and has had some

success through the discipline process. As suggested by GOC, the Commission and CDC will work to increase public awareness in this area through the use of public service announcements and/or brochures.


CDC raised the issue of a trust account overdraft notification process with the Sunset Review staff and the staff recommended its implementation. However, the Sunset Commission did not support this recommendation and it is not anticipated that the issue will be revived during the upcoming legislative session. The Commission and CDC also believe any suggested rule revisions included in GOC's report are perhaps best left for consideration after completion of the legislative session as modifications to the current rule-making process are being contemplated.

The Commission and CDC recognize the importance of the GOC's role in relation to attorney discipline and look forward to a continued relationship of candor and transparency with our colleagues in the disciplinary system.

Sincerely,



John A. Neal, Chair
Commission for Lawyer Discipline



Linda A. Acevedo
Chief Disciplinary Counsel
State Bar of Texas

c: Cathy Wylie
Michelle Hunter