

APPENDIX

EXHIBIT 1

SUNSET ADVISORY COMMISSION
STAFF REPORT WITH FINAL RESULTS

State Bar of Texas

Board of Law Examiners



2016–2017
85TH LEGISLATURE

FINAL RESULTS

STATE BAR OF TEXAS

Senate Bill 302

Summary

Under the authority of the Texas Supreme Court, the State Bar combines oversight of the legal profession with activities typical of a professional association. While attorney regulation is a clear outlier when compared to other Texas occupations, Senate Bill 302 continues the State Bar for 12 years following the Sunset Commission's ultimate conclusion that Texas' approach is in line with most other states. Instead, the commission focused on strengthening the State Bar's public protection mission primarily carried out by the Office of the Chief Disciplinary Counsel, the agency's enforcement arm. Senate Bill 302 contains the commission's recommendations to provide standard tools and authority to monitor and take action against unethical attorneys while improving the efficiency and responsiveness of the disciplinary process overall. Finally, the bill also contains the Sunset Commission's recommendations to improve the State Bar's slow and ineffective rulemaking process, while preserving the unique authority of State Bar members to approve certain rule changes and membership fees through a referendum.

The following material summarizes results of the Sunset review of the State Bar of Texas, including management actions directed to the agency that do not require legislative action.

ISSUE 1 — *Rulemaking*

Recommendation 1.1, Modified — Improve the State Bar's rulemaking process by requiring a new rules committee, clear timeframes, and opportunities for public input, while preserving the right for attorneys to vote to approve certain rule changes and membership fee increases.

Recommendation 1.2, Not Adopted — Require the Supreme Court to develop a standard rulemaking process for the State Bar ensuring ample opportunity for State Bar members and other stakeholders to vet changes to attorney regulation rules or membership dues.

Recommendation 1.3, Not Adopted — Develop a consistent process for collecting membership input on proposed rule changes to inform Supreme Court rulemaking. (Management action – nonstatutory)

ISSUE 2 — *Attorney Discipline System*

Recommendation 2.1, Modified — For new and recently licensed attorneys, authorize the State Bar to receive criminal background information originally obtained by the Board of Law Examiners during initial licensure, and require the two agencies to begin sharing this information no later than September 1, 2018.

Recommendation 2.2, Not Adopted — Require the State Bar to obtain new fingerprint-based criminal background checks, phased in over a two-year period, for currently licensed attorneys without information on file with the Board of Law Examiners.

Recommendation 2.3, Adopted — Require licensed attorneys to report criminal activity and discipline imposed by other jurisdictions to the Office of the Chief Disciplinary Counsel.

Recommendation 2.4, Not Adopted — Require overdraft notifications for attorney trust accounts so that the chief disciplinary counsel has an early warning system for possible misuse of client funds.

Recommendation 2.5, Adopted — Reinstate the chief disciplinary counsel's subpoena power during the investigative phase of the attorney discipline process.

Recommendation 2.6, Adopted — Require a process and criteria for conducting investigatory hearings to attempt earlier resolution for certain cases.

Recommendation 2.7, Adopted — Require a re-evaluation and adjustment of time frames governing the grievance process to ensure workability.

Recommendation 2.8, Adopted — Clearly establish the Grievance Referral Program in rule, and expand its use to any point in the attorney discipline process.

Recommendation 2.9, Adopted — Require comprehensive sanction guidelines in the Texas Rules of Disciplinary Procedure.

Recommendation 2.10, Adopted — Require the Office of the Chief Disciplinary Counsel to query the national disciplinary database at regular intervals.

Recommendation 2.11, Modified — Require the chief disciplinary counsel to track and report disciplinary case outcomes in greater detail.

Recommendation 2.12, Adopted — Require the State Bar to post more information on its website about disciplinary actions taken against attorneys.

As a related management action, direct the State Bar to post summary statistics and trend information regarding the attorney grievance system on the home page of the State Bar's website, including but not limited to data on the number of grievances received, their disposition, and the average time for resolution at each step of the grievance process. (Management action – nonstatutory)

Recommendation 2.13, Adopted — Direct the Office of the Chief Disciplinary Counsel to more proactively provide assistance to complainants in understanding reasons for complaint dismissal. (Management action – nonstatutory)

ISSUE 3 — *Client-Attorney Assistance Program*

Recommendation 3.1, Adopted — Require a referral process to divert minor issues from the formal grievance system to the Client-Attorney Assistance Program for informal dispute resolution.

Recommendation 3.2, Adopted — Repeal the requirement to refer dismissed grievances to the Client-Attorney Assistance Program.

ISSUE 4 — *Continue*

Recommendation 4.1, Adopted — Continue the State Bar for 12 years.

NEW ISSUES ADDED BY THE SUNSET COMMISSION

Ombudsman's office, Modified — Establish an independent Ombudsman's office under the Supreme Court to help oversee the attorney grievance system, and specify that the ombudsman may not intervene in any individual disciplinary matter.

Update Across-the-Board recommendation on board member training, Adopted — In the State Bar Act, update the Sunset Across-the-Board recommendation on board member training to ensure board members are adequately trained on their responsibilities and the limits of their authority.

Provisions Added by the Legislature

Attorney right to respond — Ensure the minimum standards and procedures for the attorney disciplinary system established by the Supreme Court provide attorneys the opportunity to respond to all allegations of misconduct made against them.

Barratry report — Require the Commission for Lawyer Discipline's annual report to include detailed information about cases relating to barratry, such as improper solicitation of clients.

Religious freedom — Prohibit rulemaking that would violate religious freedom protections in Chapter 110, Civil Practice and Remedies Code.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations on the State Bar, as enacted in Senate Bill 302, will not have a fiscal impact to the state, as the agency receives no state funds and operates outside of the appropriations process. Many provisions are designed to improve internal operations and efficiency at the agency, but their exact impact will depend on implementation. However, several bill provisions will have a direct fiscal impact to the State Bar, as summarized below.

The recommendation to create a referral process for certain low-level grievances for informal dispute resolution will have a negative fiscal impact to the State Bar's Client-Attorney Assistance Program of about \$37,000 per year to process the additional cases. Referring more low-level grievances for informal dispute resolution will allow the chief disciplinary counsel to focus resources on more high-priority cases, but will not produce a fiscal savings since the reduced caseload would be spread across the state.

The recommendation to require the State Bar to support an independent ombudsman's office at the Supreme Court will have a negative fiscal impact to the State Bar of about \$65,250 per year to fund salary and benefits for the full-time position required by the recommendation.

SUNSET COMMISSION DECISIONS

STATE BAR OF TEXAS

Summary

The following material summarizes the Sunset Commission's decisions on the staff recommendations for the State Bar of Texas, as well as modifications and new issues raised during the public hearing.

The State Bar is an outlier among Texas occupational licensing agencies. Under the authority of the Texas Supreme Court, the agency combines oversight of the legal profession with activities typical of a professional association. The Sunset Commission concluded this approach is commonplace to how attorneys are regulated nationwide and made no dramatic recommendations to reorganize the State Bar. Instead, the commission focused on strengthening the State Bar's public protection mission primarily carried out by the Office of the Chief Disciplinary Counsel, the agency's enforcement arm.

The commission identified concerns with the slow and recently ineffective process for updating rules and procedures governing attorney conduct and the disciplinary process. The commission recommends restructuring the rulemaking process under a newly created Committee on Disciplinary Rules and Referenda, while maintaining the authority of State Bar members to approve rule changes through a referendum. The commission also recommends a series of best practices to help improve efficiency and responsiveness for attorneys and the public, and help the Office of the Chief Disciplinary Counsel better do its job to monitor and take action against unethical attorneys. These changes include creating an independent ombudsman's office at the Supreme Court, better using informal dispute resolution, and ensuring the State Bar can access criminal records for licensed attorneys, among other recommendations.

ISSUE 1

The Rulemaking Process at the State Bar Obstructs Changes Needed to Effectively Regulate Attorneys.

Recommendation 1.1, Modified — In lieu of staff Recommendations 1.1, 1.2, and 1.3, retain the referendum requirement for State Bar rules while also improving the overall rulemaking process. (*See Adopted Language, page A7*)

Recommendation 1.2, Not Adopted — Require the Supreme Court to develop a standard rulemaking process for the State Bar ensuring ample opportunity for State Bar members and other stakeholders to vet changes to attorney regulation rules or membership dues.

Recommendation 1.3, Not Adopted — Develop a consistent process for collecting membership input on proposed rule changes to inform Supreme Court rulemaking. (Management action – nonstatutory)

ISSUE 2

Texas' Attorney Discipline System Lacks Best Practices Needed to Ensure Fair, Effective Regulation to Protect the Public.

Recommendation 2.1, Adopted — Authorize the State Bar to access criminal background information obtained by the Board of Law Examiners during initial licensure for new and recently licensed attorneys.

Recommendation 2.2, Adopted — Require the State Bar to obtain new fingerprint-based criminal background checks, phased in over a two-year period, for currently licensed attorneys without information on file with the Board of Law Examiners.

Recommendation 2.3, Adopted — Require licensed attorneys to report criminal activity and discipline imposed by other jurisdictions to the Office of the Chief Disciplinary Counsel.

Recommendation 2.4, Not Adopted — Require overdraft notifications for attorney trust accounts so that the chief disciplinary counsel has an early warning system for possible misuse of client funds.

Recommendation 2.5, Adopted — Reinstated the chief disciplinary counsel's subpoena power during the investigative phase of the attorney discipline process.

Recommendation 2.6, Adopted — Require a process and criteria for conducting investigatory hearings to attempt earlier resolution for certain cases.

Recommendation 2.7, Adopted — Require a re-evaluation and adjustment of time frames governing the grievance process to ensure workability.

Recommendation 2.8, Adopted — Clearly establish the Grievance Referral Program in rule, and expand its use to any point in the attorney discipline process.

Recommendation 2.9, Adopted — Require comprehensive sanction guidelines in the Texas Rules of Disciplinary Procedure.

Recommendation 2.10, Modified — Require the Office of the Chief Disciplinary Counsel to query the national disciplinary database at regular intervals as a statutory instead of management action.

Recommendation 2.11, Modified — Require the chief disciplinary counsel to track and report disciplinary case outcomes in greater detail as a statutory instead of management action.

Recommendation 2.12, Modified — Require the State Bar to post more information on its website about disciplinary actions taken against attorneys as a statutory instead of management action. Also, direct the State Bar to post summary statistics and trend information regarding the attorney grievance system on the home page of the State Bar's website, including but not limited to data on the number of grievances received, their disposition, and the average time for resolution of each step of the grievance process.

Recommendation 2.13, Adopted — Direct the Office of the Chief Disciplinary Counsel to more proactively provide assistance to complainants in understanding reasons for complaint dismissal. (Management action – nonstatutory)

ISSUE 3

The State Bar Does Not Maximize Informal Dispute Resolution to Most Effectively Resolve Grievances Against Attorneys.

Recommendation 3.1, Adopted — Require a referral process to divert minor issues from the formal grievance system to the Client-Attorney Assistance Program for informal dispute resolution.

Recommendation 3.2, Adopted — Repeal the requirement to refer dismissed grievances to the Client-Attorney Assistance Program.

ISSUE 4

Texas Has a Continuing Need for the State Bar.

Recommendation 4.1, Adopted — Continue the State Bar for 12 years.

ADOPTED NEW ISSUES

Ombudsman's Office

Establish an independent Ombudsman's office under the Supreme Court to help oversee the attorney grievance system. (*See Adopted Language, page A9*)

Update Across-the-Board Recommendation on Board Member Training

In the State Bar Act, update the Sunset across-the-board recommendation on board member training (ATB 5) recently modified by the Sunset Commission, excluding the portion regarding travel reimbursement.

Fiscal Implication Summary

Overall, the Sunset Commission's recommendations on the State Bar would not have a fiscal impact to the state, as the agency receives no state funds and operates outside of the appropriations process. Many recommendations are designed to improve internal operations and efficiency at the agency, but their exact impact would depend on implementation. However, several issues would have a direct fiscal impact to the State Bar or licensed attorneys, as summarized below.

The recommendation to require fingerprint-based criminal background checks would require many currently licensed attorneys to pay a one-time fee of \$40.

The recommendation to create a referral process for certain low-level grievances for informal dispute resolution would have a negative fiscal impact to the State Bar's Client-Attorney Assistance Program of about \$37,000 per year to process the additional cases. Referring more low-level grievances for informal dispute resolution would allow the chief disciplinary counsel to focus resources on more high-priority cases, but would not produce a fiscal savings since the reduced caseload would be spread across the state.

The recommendation to require the State Bar to support an independent ombudsman's office at the Supreme Court would have a negative fiscal impact to the State Bar of about \$65,250 per year to fund salary and benefits for the full-time position required by the recommendation.

ADOPTED LANGUAGE

State Bar of Texas

Issue 1

Modification Language

(1) In statute, create the Committee on Disciplinary Rules and Referenda (the "Committee") as a standing committee of the Bar.

A. Basic Functions. The Committee shall:

- Regularly review the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure (the "Rules");
- Issue a report on the adequacy of the Rules to the Supreme Court and the Bar Board at least once annually;
- Oversee the initial stages of the rulemaking process, as described below.

B. Organization

The Committee shall consist of the following appointments, with three-year, staggered terms:

- Four attorneys and two non-attorney public members, appointed by the Bar President; and
- Two attorneys and one non-attorney public member, appointed by the Supreme Court.
 - The Bar President shall designate an attorney member to serve as the chairperson for an annual term.
 - The Bar may hire a staff attorney to assist the Committee.

(2) Repeal Government Code § 81.024(b)-(g), and replace it with the following rulemaking process.

A. Initiation

- The Committee may initiate rulemaking independently or as part of its regular review.
- In addition, the Committee shall either (a) initiate rulemaking or (b) issue a written explanation regarding why it declined to do so within 60 days of receiving any of the following items requesting a rulemaking:
 - A Bar Board resolution;
 - A Supreme Court request;
 - A request from the Commission for Lawyer Discipline;
 - A petition signed by at least 10% of the Bar's members;
 - A concurrent resolution of the Legislature; or
 - A petition signed by at least 20,000 people.

B. Phase 1: Proposal Development

- After the Committee initiates rulemaking, it shall study the issue, hold public hearings, and draft rule proposals. As part of this process, the Committee shall take reasonable efforts to solicit feedback from different parts of the state and from different groups of attorneys and non-attorneys. The Committee shall conclude this work and publish draft proposals in the Texas Register and in the Texas Bar Journal within 6 months or the proposal is defeated.
- After the draft proposals are published, the public (including attorneys) shall have at least 30 days to submit public comments to the Committee. During this time, the public may petition for a public hearing on any draft proposal. Lastly, the Committee may amend any public proposal in response to feedback received during this time.
- Within 60 days of the public comment period closing, the Committee shall vote on whether to recommend each proposal to the Bar Board. If any proposal receives an affirmative vote of at least 5 members of the Committee, it shall be considered by the Bar Board.

C. Phase 2: Proposal Approval

- Within 180 days, the Bar Board shall vote on each proposal that it received from the Committee. For each proposal, the Board shall vote to (1) approve the proposal, (2) reject the proposal, or (3) send the proposal back to the Committee for further consideration. If any proposal receives an affirmative vote of the majority of the Board, then the Board shall petition the Supreme Court to order a referendum for the relevant proposals.
- After receiving a petition from the Bar Board, the Supreme Court shall order a referendum, much like they do today. Again the proposals shall be published in the Texas Register and the Texas Bar Journal, and the Bar's members shall have at least 30 days to consider the referendum before voting begins. Voting shall last for 30 days. Then, the results shall be determined as they are today: on each proposal individually by a simple majority of those members who voted.
- Finally, the Supreme Court may "veto" any approved proposal in its entirety with a majority vote (but the Court may not veto only part of a proposal). If the Court fails to act w/in 60 days, the proposal is deemed approved.
- A rule may not be promulgated unless it is approved at each of these steps (with the Committee, the Bar Board, the Bar's members, and the Supreme Court).

(3) Codify additional transparency protections and efficiency measures.

- All meetings/hearings of the Bar Board and Supreme Court where proposals are deliberated shall be advertised and open to the public. Also, all votes shall be recorded and made public.
- Each proposal shall be limited to one subject. Although multiple proposals may appear on one referendum ballot, they shall each pass or fail individually.
- As mentioned above, proposals shall be printed in the Texas Register and in the Texas Bar Journal. Currently they are only published in the Texas Bar Journal, which non-lawyers are unlikely to read.
- The Committee, the Bar, and the Supreme Court shall maximize technology to reduce delay and increase financial efficiency and stakeholder feedback throughout this process.

- The Bar shall allow referendum opponents a substantially equal opportunity to speak when referendums are discussed in Bar-sponsored forums.
- (4) **Require State Bar membership fee changes to be approved through the State Bar's existing budget process, instead of through the referendum process.**
- Repeal the current requirement that subjects membership and other fee changes to the referendum process.
- Instead, the State Bar shall submit and justify any fee changes as part of its existing annual budget process. These changes shall be clearly described, posted, and considered as part of the State Bar's annual public budget hearing. Finally, any fee change must be approved by the Supreme Court as part of the State Bar's budget.

Ombudsman's Office New Issue

Adopted Language

The State Bar of Texas shall fund one FTE position to serve as an Ombudsman for the Texas attorney discipline system (the "system").

- Except for the source of the Ombudsman's salary, the Ombudsman shall be completely independent from the State Bar, including the State Bar Board of Directors, the Commission for Lawyer Discipline, and the Office of the Chief Disciplinary Counsel.
- The Ombudsman shall report directly to the Supreme Court of Texas.
- The Ombudsman shall have the same access to confidential case information and duty to protect confidential information as the grievance panel members.

The Ombudsman shall:

- Receive complaints about the system;
- Receive and investigate complaints that the system's procedural rules were violated in a particular case;
- Answer questions from the public about how the system works, how to access the system, and the availability of other Bar programs;
- Help members of the public who wish to submit a lawyer grievance or inquiry by explaining what information is required and how best to present the information; and
- At least once annually, make recommendations to the State Bar Board and the Supreme Court regarding possible improvements to the system, including ways to improve access to the system and revisions to the grievance form.

On request, any entity of the State Bar shall share information with the Ombudsman that is necessary to:

- Determine if the Bar adhered to the procedural rules in a particular case; or
- Evaluate the system's overall efficacy and adequacy.

Notwithstanding any other provision, the Ombudsman shall have no authority to:

- Draft grievances or act as an advocate on behalf of members of the public;
- Overturn specific case outcomes; or
- Access privileged communications and information shared between the Office of the Chief Disciplinary Counsel and the Commission for Lawyer Discipline.

SUMMARY

The State Bar is an outlier among Texas occupational licensing agencies. Under the authority of the Texas Supreme Court, the agency combines oversight of the legal profession with activities typical of a professional association. Attorneys enjoy the unusual privilege of self-regulation, leading to a certain cynicism about the agency from some of its members, who are compelled to join as a condition of licensure; the general public, who may see it as a closed society focused on protecting its own interests; and even the Legislature, which does not enjoy typical oversight of this judicial agency. As in the last Sunset review of the State Bar in 2003, Sunset staff again weighed these theoretical concerns against the Legislature's clear historical preference for making improvements within the current structure, primarily through the Sunset process. While regulating attorneys through a mandatory bar organization may appear bizarre when compared to other state agencies, Sunset staff concluded this approach is commonplace to how attorneys are regulated nationwide. Given the Legislature's preference, an accepted national structure, and a generally well-functioning organization, this report makes no dramatic recommendations to reorganize the State Bar. Instead, the report builds on the Sunset Commission's historical role to help evolve the State Bar into a more objective and efficient regulatory agency.

Sunset staff focused effort on evaluating the State Bar's public protection mission primarily carried out by the Office of the Chief Disciplinary Counsel, the agency's enforcement arm. Overall, the review found dedicated staff working diligently to respond to the more than 7,000 grievances filed against Texas attorneys each year. However, the review identified significant concerns with the overall rules and procedures governing attorney conduct and the disciplinary process, which constrains the ability of the Office of the Chief Disciplinary Counsel to best meet its public protection responsibilities. The State Bar's archaic rulemaking process requiring individual attorneys to vote whether to approve any changes to the rules governing their own conduct and discipline has obstructed the Supreme Court's ability to make timely rule adjustments. The referendum requirement, out of step with all state and national best practices, has tended to encourage politicization of issues and lengthen the time and cost of updating rules, and has blocked any significant improvements to attorney oversight for more than two decades. This report recommends removing the referendum requirement and replacing it with a more standard rulemaking process with ample opportunity for stakeholder input under the existing authority of the Supreme Court. This change is critical to ensure the public interest is put above the profession's interest.

The archaic process for attorneys to vote on their own regulatory rules obstructs needed changes.

Because the referendum process has so obstructed regular updates of State Bar rules, Sunset staff also spent considerable time identifying best practices the Legislature should consider enacting in law, even though some of the recommendations could technically be adopted through rule. Changes such as reauthorizing investigative subpoenas, better using informal dispute resolution, and allowing for investigatory hearings would help improve efficiency and responsiveness for attorneys and the public. Other changes such as ensuring the State Bar can access criminal records of licensed attorneys would help the Office of the Chief Disciplinary Counsel better do its job to monitor and take action against unethical attorneys.

This report also addresses the Board of Law Examiners. This small agency performs the front-end investigation of candidates for a law license, administers the Texas Bar Examination, and generally flies under the radar compared to its more controversial sister agency the State Bar. Sunset staff questioned the agency's structure separating its licensing and examination of attorneys from the enforcement activities at the State Bar, but found this split approach to attorney regulation is generally standard across the country. More importantly, the agency is performing its duties well, leaving little opportunity for savings or public improvements through organizational change. However, Sunset staff identified several statutory barriers and inconsistencies preventing the board from carrying out its work in the most efficient way. The board also needs to take a renewed focus on developing clear decision-making guidelines for denying licenses or granting waivers to ensure applicants to the legal profession are treated fairly and consistently.

Finally, the review strongly concluded that keeping both agencies under Sunset review is critical, as the Sunset process has been the Legislature's only real mechanism for providing oversight, and has clearly resulted in positive change to ensure a more objective regulatory process for Texas attorneys over time.

The following material summarizes Sunset staff recommendations on the State Bar and the Board of Law Examiners.

Issues and Recommendations

State Bar of Texas

Issue 1

The Rulemaking Process at the State Bar Obstructs Changes Needed to Effectively Regulate Attorneys.

Statute requires the Supreme Court to hold a referendum of licensed attorneys to update the rules that govern the State Bar and its members, such as those that define acceptable attorney conduct. Over the past 25 years, the majority of referenda have failed — meaning no major changes occurred despite significant effort, including the most recent attempt in 2011 to comprehensively update the Texas Disciplinary Rules of Professional Conduct.

By allowing attorneys to vote on their own disciplinary rules, the state risks putting the profession's interest above the public interest. The significant time and resources needed to hold referenda combined with the low success rate contribute to a general sense of burnout among key stakeholders and create a reluctance to pursue needed rule changes. Consequently, Texas' attorney regulation rules are out of step with recent changes in the legal profession and evolving national best practices. No other occupational

licensing agency in Texas, and only one other state bar in the country, uses a referendum for rulemaking. The current setup also does not allow a clear avenue for input from non-licensed members of the general public. Implementing a more standard rulemaking process would ensure consistent opportunities for meaningful stakeholder participation without indefinitely blocking needed improvements.

Key Recommendations

- Repeal requirements for a referendum of State Bar members to approve changes to rules and membership dues, clarifying the Supreme Court's inherent authority to oversee attorney discipline and administration of the State Bar.
- Require the Supreme Court to develop a standard rulemaking process for the State Bar ensuring ample opportunity for State Bar members and other stakeholders to vet changes to attorney regulation rules or membership dues.
- The State Bar should develop a consistent process for collecting membership input on proposed rule changes to inform Supreme Court rulemaking.

Issue 2

Texas' Attorney Discipline System Lacks Best Practices Needed to Ensure Fair, Effective Regulation to Protect the Public.

The Office of the Chief Disciplinary Counsel is the State Bar's attorney discipline division responsible for screening grievances, investigating complaints, and pursuing litigation against licensed attorneys for violations of the Texas Disciplinary Rules of Professional Conduct. The Sunset review took several approaches to evaluating the attorney discipline system, including comparing it to other Texas licensing agencies based on Sunset's long history evaluating regulatory programs, considering national best practices developed by the American Bar Association, and evaluating how well previous significant Sunset recommendations have worked.

The review found the Office of the Chief Disciplinary Counsel lacks several standard tools needed to proactively identify unethical behavior and more effectively investigate and resolve cases. The attorney discipline system also lacks clear sanction guidelines and tracking of decisions needed to promote consistency and transparency in the highly decentralized decision-making structure made up of numerous grievance committees around the state. Finally, the chief disciplinary counsel does not provide enough information to the public about the complex attorney discipline system to ensure the process and decisions are understandable. The following recommendations would bring the Texas attorney discipline system in line with widely adopted state and national best practices and promote fair, effective regulation of licensed attorneys.

Key Recommendations

- Authorize standard tools to better monitor attorneys, including expanded access to criminal history information, discipline imposed in other states, and trust account overdraft notification.
- Promote more efficient case resolution by reinstating investigative subpoena power, requiring a process for conducting investigative hearings, and adjusting time frames.
- Require comprehensive sanction guidelines in the Texas Rules of Disciplinary Procedure and more detailed tracking and reporting of disciplinary case outcomes.

- Direct the State Bar to post more information on its website about attorney disciplinary actions and more proactively provide assistance to complainants in understanding reasons for complaint dismissal.

Issue 3

The State Bar Does Not Maximize Informal Dispute Resolution to Most Effectively Resolve Grievances Against Attorneys.

Many problems between clients and attorneys involve minor disagreements that may not rise to the level of ethical misconduct by attorneys, such as communication breakdowns and fee disputes. Though the State Bar offers informal dispute resolution services to address such issues, the chief disciplinary counsel does not make effective use of these services to resolve low-level grievances early in the process. The current system does not allow for early screening and diversion of a significant number of minor grievances from the formal and lengthy attorney discipline system, with frustrating results for both clients and attorneys. Providing a clear, early referral process for minor grievances to the Client-Attorney Assistance Program would help resolve many issues more quickly and improve overall public satisfaction with the grievance process.

Key Recommendation

- Require a referral process to divert minor issues from the formal grievance system to the Client-Attorney Assistance Program for informal dispute resolution.

Issue 4

Texas Has a Continuing Need for the State Bar.

The State Bar is a judicial agency operating under the authority and rules of the State Bar Act and the Texas Supreme Court. While the state clearly has a continuing interest in regulating attorneys and promoting legal professionalism, Texas' organizational approach to attorney oversight raises persistent concerns, since as a unified bar, the agency has the dual mission to both regulate attorneys and act as a professional association. Ultimately, the Sunset review did not find significant problems resulting from this nationally accepted approach to attorney regulation. Therefore, the State Bar is overall well suited to continue carrying out its unique mission, with the improvements recommended in this report. The review also emphasized the importance of maintaining the Legislature's oversight through the State Bar Act and the Sunset process, since the agency is exempt from many legislative requirements and historically most improvements made to the attorney discipline system have resulted from Sunset recommendations.

Key Recommendation

- Continue the State Bar for 12 years.

ISSUE 2

Texas' Attorney Discipline System Lacks Best Practices Needed to Ensure Fair, Effective Regulation to Protect the Public.

Background

Texas regulates attorneys through a complex system operating under the Texas Rules of Disciplinary Procedure and the Texas Disciplinary Rules of Professional Conduct adopted by the Supreme Court.¹ Appendix A shows the oversight structure of the legal profession in Texas, and Appendix D contains a flowchart, timeline, and glossary explaining the disciplinary process in more detail. The Office of the Chief Disciplinary Counsel is the attorney discipline division of the State Bar responsible for screening grievances, investigating complaints, and pursuing litigation against licensed attorneys for violations of the professional conduct rules. The Commission for Lawyer Discipline oversees the work of the chief disciplinary counsel and makes decisions on how to prosecute individual cases. Local grievance committees conduct hearings and decide cases brought forth by the chief disciplinary counsel and the Commission for Lawyer Discipline. Each of the State Bar's 17 districts has a separate grievance committee to decide cases originating in that district.

In State Bar fiscal year 2014–2015, the chief disciplinary counsel screened 7,071 grievances and conducted 1,692 investigations into cases alleging a violation of the professional conduct rules. That year, the chief disciplinary counsel resolved 416 complaints that resulted in 318 disciplinary actions against licensed attorneys.² These actions ranged from private reprimands for minor misconduct, such as failing to properly communicate with a client, to disbarments for very serious issues, such as prosecutorial misconduct resulting in a wrongful conviction. Often, attorneys must also pay restitution to financially harmed clients and attorneys' fees to the Office of the Chief Disciplinary Counsel for the costs of pursuing the case.

Sunset staff used several approaches in evaluating this unique system and making the resulting recommendations. First, staff relied on Sunset's long history of reviewing Texas occupational licensing agencies and identified best practices that could help the Office of the Chief Disciplinary Counsel more effectively do its job. Second, since attorney regulation is a judicial function under the Supreme Court's authority different than most executive-branch agencies, Sunset staff also considered national best practices specific to attorney regulation developed by the American Bar Association. Staff also evaluated how well previous Sunset recommendations have been working, and in some cases suggest refinements to the major changes enacted through Sunset in 2003, shown in the accompanying textbox. Finally, in making statutory recommendations, Sunset staff considered the Supreme Court's difficulty in making needed adjustments to procedural rules without clear legislative direction, described in more detail in Issue 1.

Key Changes to the Attorney Discipline System — 2003 Sunset Review

- Eliminated a requirement to hold hearings on every complaint, promoting efficiency and aligning the system with statewide best practices
- Created a process to review staff-level decisions to dismiss grievances
- Required time limits for processing grievances to ensure cases do not linger in the system
- Established an overall statutory framework for the discipline system, and required the Supreme Court to revise related rules

consistency and transparency for how decisions are made, but do not tie the hands of decision makers, who always maintain the authority to respond to a case's specific facts.

- **Poor tracking and analysis of case outcome data.** The chief disciplinary counsel does not collect sufficient data to report detailed case outcome information that could show how different rule violations translate into sanction decisions made by the local grievance committees on a statewide basis. Current tracking is limited to whether a sanction decided by a local grievance committee or district court falls within the range initially recommended by the chief disciplinary counsel. More detailed data could help formulate sanction guidelines and assist the local grievance committee members in making decisions. With implementation of a new, robust information system in 2013, the chief disciplinary counsel can now better track and analyze case outcomes and should make a dedicated effort to do so.

Little data exist to show how rule violations translate into statewide sanction decisions.

The chief disciplinary counsel does not provide enough information to the public, reducing transparency of the complex attorney discipline system.

An occupational licensing agency should provide complete information on its website regarding the disciplinary history of its licensees, and proactively assist the public in understanding the grievance process, including the reasons for complaint dismissal. These practices help promote public confidence in the system and in the regulated profession overall. The Office of the Chief Disciplinary Counsel does not fully meet these criteria, described as follows.

- **Incomplete disciplinary history of licensed attorneys.** Making complete disciplinary histories of individual Texas attorneys more accessible would help improve transparency by eliminating barriers to information that is already public under the law. Disciplinary history provided on the State Bar website is limited to the last ten years instead of an attorney's full history, and does not explain details of why an attorney was sanctioned. A person interested in the details of a public sanction has to separately call the Office of the Chief Disciplinary Counsel and pay \$15 for a copy of this information. Other regulatory agencies, such as Texas Medical Board, Texas Department of Licensing and Regulation, and Texas State Board of Pharmacy provide more complete and detailed enforcement history, including the reasons for enforcement actions, and often post the full enforcement order. Attorney discipline agencies in other states, such as Florida and New York, similarly post enforcement orders on their websites, making them easily accessible to the public.²³
- **Insufficient information and assistance provided to complainants.** While the Office of the Chief Disciplinary Counsel has recently improved its written communications to complainants to provide a wider range of standard reasons for dismissal, the information could still be more tailored to the individual case. Of all grievances dismissed by the chief disciplinary counsel at initial screening, nearly 80 percent allege conduct that, even if true,

A person has to pay \$15 to get public information on why an attorney was sanctioned.

would not violate the rules of conduct. Dismissal letters to complainants could provide additional explanation of *how* the alleged conduct does not violate the rules. For example, an attorney's work may be poor quality, but such conduct is not a violation of the rules, which make a distinction between unethical conduct and malpractice.

The chief disciplinary counsel could also include more information in letters to complainants about how the complex disciplinary process works overall and how to ask specific follow-up questions about the case. For example, in letters to complainants communicating dismissal after an investigation, the chief disciplinary counsel could better explain the process for evaluating and dismissing complaints once an investigation is complete. Also, staff involved in classifying and investigating grievances are willing and able to discuss cases with complainants over the phone to explain the decision to dismiss, but written communications with complainants do not include a specific contact name or phone number to make this option easy and obvious.

Recommendations

Change in Statute

2.1 For new and recently licensed attorneys, authorize the State Bar to access criminal background information obtained by the Board of Law Examiners during initial licensure.

This recommendation would authorize the State Bar to access the ongoing and up-to-date fingerprint-based criminal history information the Board of Law Examiners initially obtains as part of every attorney's licensing process. For new and recently licensed attorneys with information still on file with the board, the chief disciplinary counsel could seamlessly receive updates from DPS' criminal history information system if any subsequent criminal activity occurs after initial licensure. The State Bar should consult with DPS to determine the extent to which existing fingerprint information on file with the board could be used to implement this requirement to minimize impact on attorneys. This recommendation would ensure the chief disciplinary counsel can effectively fulfill its responsibility to monitor attorney criminal conduct and take disciplinary action when warranted, similar to how most occupational licensing agencies in Texas operate.

2.2 For currently licensed attorneys without information on file with the Board of Law Examiners, require the State Bar to obtain new fingerprint-based criminal background checks, phased in over a two-year period.

This recommendation would ensure the Office of the Chief Disciplinary Counsel can access criminal history information for all currently licensed attorneys, not only the new or recently licensed attorneys with information still on file with the Board of Law Examiners addressed in Recommendation 2.1. As a consequence of this recommendation, many currently licensed attorneys would have to obtain and pay for new fingerprint-based checks, at a one-time cost of about \$40 each. Due to the large number of attorneys licensed in Texas and the need to educate them about the new requirement, the recommendation would allow for a two-year, staggered implementation time frame which must be complete by September 1, 2019. To ensure compliance, the State Bar would be authorized to administratively suspend an attorney's

license for failing to comply with the background check requirement. Obtaining up-to-date criminal history on all attorneys would ensure the State Bar has the ability to comprehensively and consistently monitor criminal activity and take action as appropriate to protect the public, in line with most other licensing agencies in the state.

2.3 Require licensed attorneys to report criminal activity and discipline imposed by other jurisdictions to the Office of the Chief Disciplinary Counsel.

This recommendation would require the chief disciplinary counsel to develop a process and guidelines for attorneys to self-report criminal activity and disciplinary action taken by other states. The State Bar, in conjunction with the Office of the Chief Disciplinary Counsel, could use the existing dues statements attorneys fill out every year to ask pertinent questions, or develop a separate process as appropriate. The Supreme Court should amend applicable rules as needed to implement this recommendation no later than March 1, 2018. Requiring self-reporting would provide an additional tool to ensure the chief disciplinary counsel has complete information about criminal activity and disciplinary action that may require a response to protect Texans.

2.4 Require overdraft notifications for attorney trust accounts so that the chief disciplinary counsel has an early warning system for possible misuse of client funds.

The Supreme Court would be required to amend the rules governing attorney trust accounts to implement a trust account overdraft notification process in consultation with stakeholders to work out implementation details. In addition, the Supreme Court would be required to adopt rules directing how the chief disciplinary counsel should respond to the notices, such as defining the type of intervention needed depending on the severity of each situation and whether there is a pattern of repeated behavior. The Supreme Court should adopt the rules required by this recommendation no later than March 1, 2018. These changes would allow the chief disciplinary counsel to prevent financial harm to clients by better detecting situations of potential risk. Most financial institutions, particularly multistate institutions, already send overdraft notices and should have minimal implementation difficulties.

2.5 Reinstate the chief disciplinary counsel's subpoena power during the investigative phase of the attorney discipline process.

This recommendation would correct the inadvertent elimination of this authority after passage of the 2003 Sunset bill. The authority would be limited to subpoenas directly relating to specific allegations of attorney misconduct, and issued during a pending investigation. Use of subpoenas would generally follow procedures currently in place for the chief disciplinary counsel's existing authority during litigation, including requiring the chair of a local grievance committee to approve the subpoena and providing a process for the respondent to object. As part of this recommendation, the Supreme Court would need to adopt updated rules no later than March 1, 2018, to account for the reinstated authority and related changes to the process.

This recommendation would ensure the chief disciplinary counsel has timely access to information needed to effectively investigate allegations and make appropriate decisions on whether to proceed, instead of waiting until litigation to validate or disprove claims made. This change would also bring the chief disciplinary counsel's authority in line with most other occupational licensing agencies in Texas and other attorney discipline agencies around the country.

2.6 Require a process and criteria for conducting investigatory hearings to attempt earlier resolution for certain cases.

This recommendation would require the Office of the Chief Disciplinary Counsel to develop a process for identifying cases in which early hearings are appropriate to attempt settlement before proceeding to the litigation phase. The chief disciplinary counsel would develop rule changes needed to implement this process for Supreme Court review and adoption no later than March 1, 2018. To limit costs, the rules should authorize the chief disciplinary counsel to conduct hearings by teleconference. This change would ensure the disciplinary process includes opportunities for early, informal resolution of cases, avoiding litigation when possible. This change would also put the Texas attorney discipline process in line with other Texas occupational licensing agencies that have successful early case resolution processes.

2.7 Require a re-evaluation and adjustment of time frames governing the grievance process to ensure workability.

This recommendation would require the Office of the Chief Disciplinary Counsel to develop and propose rule amendments to the Supreme Court to adjust various timelines governing the grievance process in the Texas Rules of Disciplinary Procedure. These adjustments are important to ensure the other changes to the disciplinary process in this report are workable, and the overall goal for a more efficient process is achieved. The changes could simply allow for good-cause exceptions to the current investigation timeline of 60 days, or could extend the current timelines to allow for the earlier subpoena authority and hearings described in Recommendations 2.5 and 2.6. In adopting the rule changes, the Supreme Court should balance providing flexibility with preserving timely resolution of disciplinary cases. The rules should be adopted by March 1, 2018.

2.8 Clearly establish the Grievance Referral Program in rule, and expand its use to any point in the attorney discipline process.

Under this recommendation, the chief disciplinary counsel would develop proposed rules formally establishing the Grievance Referral Program in the Texas Rules of Disciplinary Procedure. The rules should include criteria for attorney participation, currently only described in internal policy, and should authorize use of the program at any point in the attorney discipline process. The Supreme Court should evaluate and adopt the rules no later than March 1, 2018. This recommendation would formalize use of the Grievance Referral Program and provide flexibility for using this non-disciplinary approach for case resolution in a wider range of circumstances when appropriate.

2.9 Require comprehensive sanction guidelines in the Texas Rules of Disciplinary Procedure.

Under this recommendation, the chief disciplinary counsel would be required to propose more detailed sanction guidelines to the Supreme Court linking specific types of rule violations and ethical misconduct to a clear range of appropriate sanctions. The rules would also detail aggravating and mitigating factors that could be used as justification for deviating from the established standards. The updated sanction guidelines would provide guidance to help make sanction decisions in the decentralized attorney grievance system, but would not create limitations on the decision-making authority of any judge or panel. To develop the guidelines, the chief disciplinary counsel should coordinate this effort and use a stakeholder input process to inform recommendations to the Supreme Court, and ensure guidelines for cases heard by grievance committees are consistent with guidelines for cases heard in district court. The Supreme

Court should adopt final rules no later than March 1, 2018. Implementing this recommendation would promote consistent statewide application of sanctions for similar types of misconduct and would increase transparency into decision making.

Management Action

2.10 Direct the Office of the Chief Disciplinary Counsel to query the national disciplinary database at regular intervals.

The chief disciplinary counsel should adopt a process to regularly query the National Lawyer Regulatory Data Bank to identify any Texas attorneys disciplined in other states. This process would allow the chief disciplinary counsel to better protect the public and would serve as a periodic check on attorney self-reporting required under Recommendation 2.3.

2.11 Direct the chief disciplinary counsel to track and report disciplinary case outcomes in greater detail.

The Office of the Chief Disciplinary Counsel should make adjustments to its data tracking system to ensure it captures more detail on the outcomes of disciplinary cases to track and evaluate trends over time. The chief disciplinary counsel should evaluate and periodically report this information to the Commission for Lawyer Discipline and grievance committee members, and should also provide summary information to the public through the State Bar website. When establishing this improved tracking system, the chief disciplinary counsel should consider the following factors:

- Linking rule violations with the sanction imposed, including cases diverted to the Grievance Referral Program
- Tracking aggravating and mitigating factors used in developing sanction recommendations
- Tracking how often sanction decisions align with the sanction guidelines adopted under Recommendation 2.9
- Tracking sanctions by grievance committee district to assist in evaluating regional patterns and facilitate future training efforts of grievance committee volunteers

Collecting, analyzing, and reporting trend data on sanction outcomes would help evaluate consistency throughout the state, and help decision makers adjust approaches as needed in imposing sanctions. This data would also provide greater transparency to the public and policymakers about how the discipline system functions overall.

2.12 Direct the State Bar to post more information on its website about attorney disciplinary actions.

This recommendation would increase transparency and improve the ability of people to make informed decisions about attorneys they may hire by providing better access to information that is already public. The State Bar would post more detailed information regarding attorney disciplinary history on its website, as follows:

- All disciplinary action taken against attorneys should be listed and generally described as part of the attorney's profile, removing the current 10-year time limit.

- The full text of disciplinary judgments entered by local grievance committees or district courts that are already public records should be provided as a link from attorney profiles.

In implementing this recommendation, the State Bar should aim to post as much historical information as practical.

2.13 Direct the Office of the Chief Disciplinary Counsel to more proactively provide assistance to complainants in understanding reasons for complaint dismissal.

The chief disciplinary counsel should revise its current form letters to include both an explanation of how the grievance system works and more specific reasoning for grievance dismissals, when applicable. As part of this recommendation, the chief disciplinary counsel should include language offering to assist complainants over the phone to help understand reasons for dismissal, and list a specific contact person and phone number. This recommendation would help complainants understand the discipline system and improve public satisfaction with the process overall.

Fiscal Implication

These recommendations would not have a fiscal impact to the state, as the State Bar receives no state funds and operates outside of the appropriations process.

Recommendation 2.2 would not have a fiscal impact to the agency, but would require many licensed attorneys to pay about \$40 for a fingerprint background check through DPS. The chief disciplinary counsel could handle any related increased workload within current resources.

Recommendation 2.4 would have a fiscal impact to the State Bar of about \$114,466 annually. The Office of the Chief Disciplinary Counsel would need an additional attorney and an administrative support position to process the trust account overdraft notifications received from financial institutions and conduct the appropriate follow-up actions needed.

Recommendation 2.6 could have a fiscal impact to the State Bar, but the exact amount would depend on implementation and could not be estimated. Hearings to resolve disciplinary cases sooner would require reimbursement of travel costs for grievance committee members and chief disciplinary counsel staff. However, these costs could be offset if these hearings are successful in resolving more cases sooner and avoiding lengthy and expensive litigation. The chief disciplinary counsel could also mitigate these costs by use of teleconference when appropriate.

Querying the National Lawyer Regulatory Data Bank as directed by Recommendation 2.10 is free of charge to the State Bar, but could result in the need to take additional disciplinary action against attorneys sanctioned in other states. However, the chief disciplinary counsel indicates staff could handle any workload increase within current resources.

¹ Supreme Court of Texas, *Texas Disciplinary Rules of Professional Conduct*, accessed March 12, 2016, https://www.texasbar.com/AM/Template.cfm?Section=Lawyers_Home&Template=/CM/ContentDisplay.cfm&ContentID=27271; Supreme Court of Texas, *Texas Rules of Disciplinary Procedure*, January 15, 2015, <https://www.texasbar.com/AM/Template.cfm?Section=Home&ContentID=25766&Template=/CM/ContentDisplay.cfm>.

² State Bar of Texas, *Commission for Lawyer Discipline Annual Report*, 17, August 31, 2015, <https://www.texasbar.com/Content/NavigationMenu/ForThePublic/ProblemswithanAttorney/GrievanceEthicsInfo1/CommissionforLawyerDisciplineAnnualReport.pdf>.

- ³ All citations to Texas statutes are as they appear on <http://www.statutes.legis.state.tx.us/>. Section 411.100, Texas Government Code.
- ⁴ Section 411.1005, Texas Government Code.
- ⁵ *Texas Rules of Disciplinary Procedure*, Part VIII Compulsory Discipline; Section 81.078, Texas Government Code.
- ⁶ Board of Disciplinary Appeals, *Report 2015*, 8–9, August 31, 2015, http://reboda.org/sites/default/files/PDFs/Report2015_0.pdf.
- ⁷ *Texas Rules of Disciplinary Procedure*, Part IX Reciprocal Discipline.
- ⁸ American Bar Association, “Rule 22, Model Rules for Lawyer Disciplinary Enforcement,” accessed March 7, 2016, http://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_22.html.
- ⁹ *Texas Disciplinary Rules of Professional Conduct*, Rule 1.14, Safekeeping Property.
- ¹⁰ American Bar Association, “Rule 2, Model Rules for Trust Account Overdraft Notification,” accessed March 12, 2016, http://www.americanbar.org/groups/professional_responsibility/resources/client_protection/orule2.html; American Bar Association, “Jurisdictions with Trust Account Overdraft Notification Rules,” December 2015, http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/trust_chart_authcheckdam.pdf.
- ¹¹ Wisconsin Court System, *Trust Account Annual Report*, accessed March 8, 2016, <https://www.wicourts.gov/services/attorney/docs/trustannualreport.pdf>.
- ¹² Examples include Texas Medical Board (Section 153.007, Texas Occupations Code), Texas State Board of Pharmacy (Section 565.058, Texas Occupations Code), and Texas Department of Licensing and Regulation (Section 51.3512, Texas Occupations Code).
- ¹³ American Bar Association, “Rule 14, Model Rules for Lawyer Disciplinary Enforcement,” accessed March 12, 2016, http://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_14.html.
- ¹⁴ Sunset Advisory Commission, *State Bar of Texas Staff Report*, March 2002, 23, <https://www.sunset.texas.gov/public/uploads/files/reports/State%20Bar%20o%20Texas%20Staff%20Report%202003%2075%20leg.pdf>.
- ¹⁵ 22 T.A.C. Section 179.6.
- ¹⁶ Section 81.0753, Texas Government Code.
- ¹⁷ American Bar Association, “Rule 11, Model Rules for Lawyer Disciplinary Enforcement,” accessed March 9, 2016, http://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_11.html.
- ¹⁸ State Bar of Texas, *State Bar Board Policy Manual*, 6.09 Grievance Referral Program.
- ¹⁹ *Texas Rules of Disciplinary Procedure*, Rule 2.18 and Rule 3.10 Imposition of Sanctions. Rule 3.10 is nearly identical to Rule 2.18, but lists two additional factors district courts are required to use in determining appropriate sanctions.
- ²⁰ 223 out of 318 sanctions imposed in fiscal year 2014–2015 involved attorneys with prior disciplinary history.
- ²¹ Title 22 T.A.C. Chapter 190.
- ²² Florida Bar, *Florida’s Standards for Imposing Lawyer Sanctions*, updated May 2015, [https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/18F71B077A612FB785256DFE00664509/\\$FILE/Standards%20for%20Lawyer%20Sanctions.pdf?OpenElement](https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/18F71B077A612FB785256DFE00664509/$FILE/Standards%20for%20Lawyer%20Sanctions.pdf?OpenElement); State Bar of California, *Rules of Procedure of the State Bar of California, Title IV Standards for Attorney Sanctions for Professional Misconduct*, January 1, 2016, http://rules.calbar.ca.gov/portals/10/documents/Rules_Title5_Procedure.pdf; American Bar Association, *Standards for Imposing Lawyer Sanctions*, February 1992, http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/corrected_standards_sanctions_may2012_wfootnotes_authcheckdam.pdf.
- ²³ New York State Unified Court System, “Departmental Disciplinary Committee,” accessed March 16, 2016, <http://www.nycourts.gov/courts/ad1/committees&programs/ddc/index.shtml>; Florida Bar, “How to find public record attorney discipline information at floridabar.org: user-friendly instructions for the public and the media,” accessed March 16, 2016, <http://www.floridabar.org/tfb/TFBLawReg.nsf/9dad7bbda215afe885257002004833e5/1515ea541926b86c85257a10005f673a?OpenDocument>.

EXHIBIT 2

Sec. 81.08793. USE OF TECHNOLOGY. The supreme court, the committee, and the state bar shall use technological solutions throughout the disciplinary rule proposal process to promote:

- (1) financial efficiency; and
- (2) comments from interested persons.

Added by Acts 2017, 85th Leg., ch. 531 (S.B. 302), eff. Sept. 1, 2017

Sec. 81.08794. EXPIRED TIME AND DEFEATED RULE PROPOSAL.

- (a) If a time limit provided by this subchapter expires or a disciplinary rule proposal is otherwise defeated, the process for initiating the proposed disciplinary rule may again be initiated in accordance with this subchapter.
- (b) For good cause shown, the supreme court may grant a petition to extend any time limit provided by this subchapter until a date that is not later than the 90th day after the original deadline.

Added by Acts 2017, 85th Leg., ch. 531 (S.B. 302), eff. Sept. 1, 2017

SUBCHAPTER E-2. OMBUDSMAN FOR ATTORNEY DISCIPLINE SYSTEM

Sec. 81.0881. DEFINITIONS. In this subchapter:

- (1) "Ombudsman" means the ombudsman for the attorney discipline system of the state bar.
- (2) "System" means the attorney discipline system of the state bar.

Added by Acts 2017, 85th Leg., ch. 531 (S.B. 302), eff. Sept. 1, 2017

Sec. 81.0882. OMBUDSMAN FOR ATTORNEY DISCIPLINE SYSTEM.

- (a) The state bar shall fund one full-time equivalent position of ombudsman for the attorney discipline system.
- (b) The ombudsman is selected by the members of the supreme court and is independent of the state bar, the board of directors, the commission, and the chief disciplinary counsel.
- (c) The ombudsman shall report directly to the supreme court.

Added by Acts 2017, 85th Leg., ch. 531 (S.B. 302), eff. Sept. 1, 2017

Sec. 81.0883. POWERS AND DUTIES OF OMBUDSMAN.

- (a) The ombudsman shall:
 - (1) review grievances to determine whether the state bar followed the proper grievance procedures;
 - (2) receive complaints about the system;
 - (3) receive and investigate complaints on violations of the system's procedural rules;

- (4) answer questions from the public on the system's operation, accessing the system, and the availability of other state bar programs;
- (5) assist members of the public wishing to submit a lawyer grievance by explaining the information required and the methods for submitting the information; and
- (6) at least annually, make recommendations to the board of directors and the supreme court for improvements to the system, including ways to improve access to the system and changes to the grievance form.

(b) The ombudsman may not:

- (1) draft a complaint for a member of the public;
- (2) act as an advocate for a member of the public;
- (3) reverse or modify a finding or judgment in any disciplinary proceeding; or
- (4) intervene in any disciplinary matter.

Added by Acts 2017, 85th Leg., ch. 531 (S.B. 302), eff. Sept. 1, 2017

Sec. 81.0884. ACCESS TO INFORMATION. The chief disciplinary counsel, a district grievance committee, the board of directors, the commission, and state bar members shall share with the ombudsman requested information that is necessary to:

- (1) determine whether the state bar followed procedural rules related to a particular grievance; or
- (2) evaluate the system's efficacy and adequacy.

Added by Acts 2017, 85th Leg., ch. 531 (S.B. 302), eff. Sept. 1, 2017

Sec. 81.0885. CONFIDENTIAL INFORMATION; PRIVILEGED COMMUNICATIONS.

(a) All types of information, proceedings, hearing transcripts, and statements presented to the ombudsman are confidential and may not be disclosed to any person other than the chief disciplinary counsel unless disclosure is ordered by a court.

(b) The ombudsman may not access privileged communications and information shared between the chief disciplinary counsel and the commission.

Added by Acts 2017, 85th Leg., ch. 531 (S.B. 302), eff. Sept. 1, 2017

SUBCHAPTER F. COMMITTEE ON PROFESSIONAL ETHICS

Sec. 81.091. COMMITTEE ON PROFESSIONAL ETHICS.

(a) The professional ethics committee consists of nine members of the state bar appointed by the supreme court.

EXHIBIT 3

OMBUDSMAN FOR ATTORNEY DISCIPLINE

Welcome to the Office of the Ombudsman for the Attorney Discipline System! Below is a brief description of what the Ombudsman is tasked with doing and some other information that you may find useful.

What is an Ombudsman?

In general, an ombudsman is a neutral representative of a governmental entity or company who responds to questions and concerns brought by the public and may report trends, systemic problems, and organizational issues to high-level executives and directors in a confidential manner. The Ombudsman for the Attorney Discipline System was created by the Texas Legislature to be:

A Source of Information for the Public – The Ombudsman is tasked with answering questions from the public on the grievance system's operations, accessing the system, the filing of grievances, and the availability of other State Bar programs.

A Monitor of the Attorney Discipline System – The Ombudsman is responsible for receiving complaints about the system and investigating complaints to make sure the proper procedures were followed. Also, the Ombudsman makes recommendations to the Supreme Court of Texas as well as the State Bar Board of Directors for improvements to the attorney discipline system.

Independent – The Ombudsman reports directly to the Supreme Court of Texas and is independent of the State Bar Board of Directors, the Commission for Lawyer Discipline, the Chief Disciplinary Counsel, and the Board of Disciplinary Appeals. This independence allows the Ombudsman to impartially evaluate any complaints from the public about the grievance system and provide reports to the Supreme Court of Texas as an outside party.

Confidential – The Ombudsman cannot disclose any information, proceedings, hearing transcripts, or statements he or she receives, including documents from various State Bar of Texas departments, to any person other than the Chief Disciplinary Counsel.

What can the Ombudsman help you with?

Contact the Ombudsman if you:

- have questions about the system's operation, accessing the system, or the availability of other State Bar disciplinary programs;
- want information about how to file a lawyer grievance;
- have a closed, previously-filed grievance that you would like reviewed to ensure the proper grievance procedures were followed;
- have a suggestion for improving the system that you would like to bring to the attention of the Supreme Court of Texas and/or the State Bar Board of Directors; or
- would like to express concerns or constructive proposals about the attorney discipline system.

What is the Ombudsman not allowed to do?

The Ombudsman **cannot**:

- draft a complaint for you;
- act as an advocate for you in any matter;
- represent you as your attorney in any matter;
- reverse or modify a finding or judgment in any disciplinary proceeding; or
- intervene in any pending disciplinary matter.

How do I get in touch with the Ombudsman?

If you think the Ombudsman can help you based on the information above, you can reach him or her via phone, mail, email, or fax at:

Stephanie Lowe
 Ombudsman, Attorney Discipline System
 State Bar of Texas
 P.O. Box 12487
 Austin, Texas 78711-2487

Phone: 512-372-1125 or 1-844-527-0382 (toll free)
 Fax: 512-427-4445

stephanie.lowe@texasbar.com

When calling about a specific grievance, please provide information that will help the Ombudsman identify it, such as the reference or case number.

Helpful Links

If you need information about something that is outside the scope of the Ombudsman's office, chances are the State Bar of Texas or other disciplinary entities have resources that can help. Below are some useful links to additional resources:

If you have a matter that is pending before the Board of Disciplinary Appeals (BODA) and want to know its status...	Contact information Board of Disciplinary Appeals Website Case Search
If you have a matter pending with the Chief Disciplinary Counsel (CDC) and want to know its status...	Contact Information Chief Disciplinary Council Website Information on the Grievance Process
If you have a minor concern, disagreement, or misunderstanding with your attorney, contact the Client-Attorney Assistance Program (CAAP) ...	Contact information: P.O. Box 12487 Austin, Texas 78711-2487 Phone: 1-800-932-1900 or 1-800-204-2222, ext. 1790 Fax: 512-427-4442 caap@texasbar.com CAAP Website Brochure for CAAP's services in English or Spanish
If you are having a fee dispute with your attorney...	Attorney Fee Disagreement Website
If you need help finding an attorney...	Find an Attorney Search Engine Lawyer Referral & Information Service (LRIS)
If you can't afford an attorney or need a low-cost legal option...	Information for those that can't afford an attorney Low-cost Legal Options
If you are an inmate who is looking for resources relating to criminal matters...	Link

EXHIBIT 4

Stephanie Lowe

From: Stephanie Lowe
Sent: Friday, September 6, 2019 10:27 AM
To:
Subject: Information about the Attorney Discipline System
Attachments: CAAP_Brochure.pdf; CAAP-Checklist.pdf; AttorneyComplaintInformation.pdf; GrievanceFormEnglish.pdf

Thank you for contacting the Ombudsman for the Attorney Discipline System. I am sorry the issues you are experiencing with your attorney and hope that the below information is helpful to you. As we discussed over the phone, there are two divisions within the State Bar of Texas that handle grievances against attorneys, the Client-Attorney Assistance Program (CAAP) and the Chief Disciplinary Counsel (CDC):

- **The Client-Attorney Assistance Program (CAAP)** – This group can assist you if you are having a problem communicating with your lawyer; a disagreement or misunderstanding about your case; concerns about your bill; or trouble finding or contacting your lawyer. CAAP is the informal option for those wishing to resolve their issues without filing a formal grievance against their attorney. Therefore, this option will not lead to any sanctions against the attorney. They can be contacted here:

Client-Attorney Assistance Program
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487

Phone: 1-800-932-1900 or 1-800-204-2222, ext. 1790 Fax: 512-427-4442

Email: caap@texasbar.com

Website:

<https://www.texasbar.com/Content/NavigationMenu/ForThePublic/ProblemswithanAttorney/CAAP/default.htm>

I have attached a brochure and checklist for CAAP for you to review.

- **The Chief Disciplinary Counsel (CDC)** – This is the main division that is responsible for the screening, investigation and litigation of allegations of professional misconduct against attorneys. If you decide to file a formal grievance through the CDC, the first step is to complete a grievance form through the State Bar of Texas' online submission system. When filling this out, keep in mind that you should fill out the form completely with as much information as you have. You should attach copies (not originals) of any documents that you believe will help explain your grievance and mail copies of your documents to:

State Bar of Texas
Chief Disciplinary Counsel's Office
P.O. Box 13287
Austin, Texas 78711
Phone: (877) 953-5535
Fax: (512) 427-4169

You can find a video explaining this process here: <https://pbvideo.vids.io/videos/7c9bdeb31d1ce3c3f4/cdc-how-to-file-a-grievance>. If you would rather read about the process in detail, you can find that here: https://www.texasbar.com/AM/Template.cfm?Section=File_a_Grievance&Template=/CM/HTMLDisplay.cfm&ContentID=33360

I suggest that you read everything thoroughly before submitting any grievance but if you are ready to get started with the process, here is the link for the online submission form: <https://cdc.texasbar.com/cdc/>.

I have attached a brochure as well as a complaint form for your reference.

We also discussed the fact that if your issues are solely fee disputes, there is a possibility that the State Bar of Texas will not be able to assist you with them. If that is the case, you can reach out to your local bar association's fee dispute committee to resolve the problem. More information can be found about them on the State Bar of Texas' website: <https://www.texasbar.com/Content/NavigationMenu/ForThePublic/ProblemswithanAttorney/ResolvingFeeDisagreements/default.htm>

Hopefully the information above is what you needed to get started working on the issues you are experiencing. However, if you have any further questions or need anything else, feel free to contact me again.

Good luck resolving everything.

Sincerely,
Stephanie

SERVING THE PUBLIC AND THE MEMBERSHIP
OF THE STATE BAR OF TEXAS

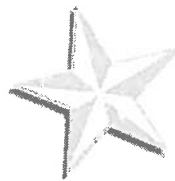
—CAAP—
CLIENT—ATTORNEY
ASSISTANCE PROGRAM

WHAT IT IS AND HOW IT WORKS



CAAP Mission Statement:

CAAP's mission is to "facilitate communication and foster productive dialogue between Texas lawyers and their clients in an effort to assist them in resolving minor concerns, disagreements, or misunderstandings that are impacting the Attorney-Client relationship."



Two Distinct Options

When a client contacts CAAP on the grievance helpline or in writing, CAAP explains the following two distinct options:

I. Dispute Resolution Process

Clients may elect to participate in dispute resolution with their attorney-of-record in order to address concerns or requests they may have. While attorney participation in CAAP's dispute resolution process is not mandatory, our program provides a confidential alternative to the formal grievance process. Many issues regarding misunderstandings over communication, fee disputes, and requests for client files are normally resolved using this method.

II. Formal Grievance Process

Clients may release their attorney and file a grievance. A grievance form may be requested from and returned to the Office of the Chief Disciplinary Counsel. Upon review of the grievance a letter will be mailed to the client indicating the status of their grievance. Please review the *Attorney Grievance Information* brochure for more details.

Step 1

Documenting a Client's Need

The most common reason a client contacts CAAP is because an attorney is not returning phone calls. If an attorney does not return telephone calls for extended periods of time, it is often effective to send a letter to the attorney. Written correspondence accomplishes two important objectives:

- (1) the attorney has the client's concerns in writing so there is no misunderstanding about the client's concerns and;
- (2) the letter documents the communication problems that are occurring.

Many clients have used these letters successfully to request an appointment with their attorney, ask questions regarding the case, request information or a copy of their file, etc. Sending letters by certified mail also documents when the attorney received the client's letter. Emails and faxes are also effective in documenting client concerns.

Step 2

Requesting Assistance from CAAP

Should an attorney not respond to their client's letter, the client may contact CAAP and obtain a Request for Assistance Form (*RFA*). The client must complete the RFA and return it with a copy of the letter the client previously sent to their attorney and a copy of the signed certified receipt if available. While CAAP is here to help resolve issues between attorneys and clients, we cannot assist clients with underlying civil or criminal matters, provide legal advice, or remove, replace, or compel your attorney to take action.

Step 3

CAAP Contacts the Attorney

A CAAP attorney will send the client's attorney-of-record a letter reviewing the dispute resolution process and request that the attorney contact the client. A copy of the client's letter sent to the attorney will also be enclosed.

Should CAAP's initial letter be unsuccessful, CAAP will send another letter and/or place a phone call to the attorney. In most instances, issues are resolved using this method.

Step 4

Closing the Dispute Resolution Process

In some instances an attorney may not respond to CAAP, or a client may determine that their attorney's response is unsatisfactory. A client can request a grievance form at the closing of the dispute resolution process. All grievances are reviewed by the Office of the Chief Disciplinary Counsel and not by CAAP.

Please keep in mind the following suggestions when preparing a written grievance:

- Prepare a timeline as a guide.
- Give information on any and all events, provide dates, facts, and explain behavior issues related to the alleged misconduct.
- Organize documents related to your grievance. Give documents reference or exhibit numbers to assist investigators in evaluating the alleged misconduct.

Client Sample Letter

Date

[Attorney Name]
[Attorney Address]

RE: [Client Name]

I am writing in reference to my [type of case] case you are handling for me. I have concerns about: [list and describe your questions or concerns]

- 1)
- 2)
- 3)

I would like the opportunity to discuss these concerns with you [in person, by phone] *or* [I would like a response in writing]. I can be reached at [your name, address, and telephone #].

[I look forward to hearing from you] or [I would appreciate hearing from you] by [reasonable date]. Thank you in advance for your attention to this request.

Yours truly,
[Client Name]

TO REACH CAAP AND THE
GRIEVANCE INFORMATION HELPLINE CALL:

1-800-932-1900

OR

1-800-204-2222, EXT. 1790

(from anywhere in Texas or out-of-state)



CAAP mailing address:

P.O. Box 12487

Austin, TX 78711-2487

Fax: (512) 427-4442

caap@texasbar.com

State Bar of Texas website: www.texasbar.com

KNOW THE STEPS: How to get assistance from CAAP

Step 1: Write a letter to your attorney

- Write directly to the attorney of record. Make sure to include the following:
 - o Any questions or concerns about your case or legal situation
 - o What action you would like your attorney to take
 - o A 7-10 business day timeframe for your attorney to respond
- Send the letter to your attorney by certified mail (whenever possible) and keep a copy for yourself
- Allow your attorney time to respond
- If your attorney responds and there are still more concerns, write to your attorney again, including your new questions
- If your attorney does not respond, proceed to step 2

Step 2: Complete your Request For Assistance form (RFA)

- Fill out all sections and sign the form
- RFA must have:
 - o A copy of the letter you sent to your attorney regarding your concerns (not over 90 days old)
 - o A copy of your dismissal letter from the Chief Disciplinary Counsel if you previously filed a Grievance against your attorney
 - o Power of Attorney (POA), or Letter of Protection (LOP) if necessary

***** RFAs that do not comply with the requirements will not be processed.**

Step 3: Send the RFA form to CAAP

- **Mail, Fax or E-mail the RFA and attachments to CAAP**
- Allow 5 business days for CAAP to process your request
- RFAs are processed in the order in which they are received
- If we are able to process your request, you can expect to receive a letter from CAAP along with a copy of the letter we send to your attorney
- If your request is denied, you will receive a letter or phone call explaining why

REMEMBER:

- The Client-Attorney Assistance Program is a voluntary program. Our purpose is to help clients communicate better with their attorneys; we **cannot compel** your attorney to take a specific action
- **CAAP cannot contact your attorney on your behalf while a grievance is pending**
- CAAP can only contact an attorney on behalf of the client of that attorney. If you are not a client of the attorney who is the subject of the RFA, you **must include a copy** of the Power of Attorney form with the Request for Assistance
- Requests for client files on **criminal cases** are subject to the discovery rules of the specific jurisdiction and The Texas Code of Criminal Procedure, and Powers of Attorney may not be honored

File #
(Please use this # when contacting us.)

REQUEST FOR ASSISTANCE

The State Bar of Texas Client-Attorney Assistance Program

P.O. Box 12487 Austin, TX 78711-2487 caap@texasbar.com Phone: (800) 932-1900/Fax: (512) 427-4442

Please be advised that the CAAP process and Grievance process may not take place at the same time.

Section A

Please Print Clearly

Mr. Mrs. Ms. (Person completing this application. If not the client, you must provide Power of Attorney)

Name _____ Telephone # _____
First Last TDCJ/SID#

Address _____ E-Mail: _____
Street City State Zip Code

Section B

Mr. Mrs. Ms. (If the person completing this application is not the client or the attorney seeking assistance, please answer the following)

Client's Name _____ Telephone # _____
First Last

Address _____ E-Mail: _____
Street City State Zip Code

Section C

(Attorney Information)

Name _____ Telephone # _____
First Last

Address _____ Bar card # _____
Street City State Zip Code

Section D

(Client-Attorney Relationship Information)

Is this your **current** or **previous** attorney? (Circle One) If previous, are you currently represented by a new attorney? Yes No

Date attorney was hired/appointed: _____ Do you have a copy of the contract? Yes No

Has CAAP assisted this client before? Yes No Type of legal matter: Business Civil Criminal Collections
 Family Law Personal Injury Other _____

Have you or this client filed a grievance against this attorney in this matter with the Chief Disciplinary Counsel Office? Yes No

If yes, you **must** include a copy of your grievance dismissal letter.

Section E

Assistance is needed with the following: Itemized billing statement Case Status Refund Client File
 Copy of _____
 Other _____

What steps have been taken to resolve the problem with the attorney? _____

I do not intend this request to be a formal grievance against this attorney: This is a request for help to resolve this problem

I understand that it may be necessary to act promptly to preserve any legal rights I may have and that commencement of a civil action may be required to preserve those rights. I acknowledge my understanding that completion of this form does not constitute the commencement of a civil action and that the State Bar of Texas will not commence any civil action on my part. I acknowledge that it is my responsibility to seek and obtain any necessary legal advice with respect to this matter. I also understand that the information I send may be used to assist me and will remain confidential for purposes of resolving the issue(s) described above.

Client/Power of Attorney Signature

Date

Revised 6/17

THE STATE BAR OF TEXAS

ATTORNEY COMPLAINT INFORMATION

This brochure answers some common questions about the State Bar's attorney disciplinary system. If you have any questions about this process that are not answered in this brochure, please call the Grievance Information Helpline of the State Bar of Texas at 1-800-932-1900.



All lawyers in Texas have an obligation to maintain a high standard of ethical conduct toward their clients and others. To enforce this standard, the State Bar of Texas investigates and prosecutes complaints of professional misconduct against lawyers licensed in Texas, pursuant to the Texas Rules of Disciplinary Procedure as promulgated by the Supreme Court of Texas.

What rules are lawyers required to follow?

For purposes of professional discipline, the ethics rules that attorneys must follow are called the Texas Disciplinary Rules of Professional Conduct. These rules may be found online at texasbar.com. They are also printed in the Texas Government Code (Title 2, Subtitle G-Appendix A, Article 10, section 9).

Should I file a grievance?

Reporting unethical behavior of Texas lawyers helps reduce and prevent harm to the public and the legal profession. In order for the State Bar to investigate the lawyer's conduct, the person seeking to complain about the lawyer must file a written grievance describing his or her conduct with the State Bar's Office of Chief Disciplinary Counsel.

You might find it helpful to speak with the State Bar's Client Attorney Assistance Program staff in determining whether to report the conduct of the lawyer and/or whether other resources might be beneficial. The Client Attorney Assistance Program is a statewide dispute resolution program which assists clients and attorneys in resolving minor problems affecting their relationship when the issues do not involve misconduct under the Texas Disciplinary Rules of Professional Conduct. The Bar's Grievance Information Helpline (1-800-952-1900) is answered by staff of this Program.

Is there a statute of limitations on filing a grievance?

Yes. With a few exceptions, there is a four-year statute of limitations on filing a grievance.

Do I have to be the client in order to file a grievance against a lawyer?

No. Any person with knowledge of what they believe to be professional misconduct by a lawyer has the ability to file a grievance.

How do I file a grievance?

The first step in filing a grievance is to complete a grievance form either through the Bar's online submission system, located at cdc.texasbar.com, or by submitting a completed grievance form by mail or fax to:

State Bar of Texas
Chief Disciplinary Counsel's Office
P.O. Box 13287
Austin, Texas 78711

Fax: (512) 427-4169

The form is available on the Bar's website, texasbar.com, in pdf format in both English and Spanish, or a form can be mailed to you at your request by calling 1-866-224-5999. Please be sure to include **copies** of all supporting documents such as letters, pleadings (court documents), emails, etc. **Do not send original documents, as they will not be returned. Additionally, please do not use staples, post-it notes, or binding.**

If you are reporting the conduct of your current or former lawyer, it is important to know that signing the grievance form waives the attorney-client privilege that would otherwise keep discussions between you and your lawyer confidential. The form must be signed by the complainant and dated.

What happens after I file a grievance?

The Chief Disciplinary Counsel will review your grievance and will, within 30 days, determine whether the conduct of the lawyer as alleged might constitute a violation of the Disciplinary Rules of Professional Conduct (the ethics rules). This review is called the "classification stage" of the disciplinary process. However, prior to classification, you may be referred to the Client Attorney Assistance Program for assistance.

A grievance that is determined to not allege a violation of the ethics rules is classified as an "Inquiry" and is dismissed. A grievance that is determined to state a possible violation of the ethics rules is classified as a "Complaint" and is investigated by the Chief Disciplinary Counsel. You will be notified of this determination of the Chief Disciplinary Counsel by mail.

Can I amend and re-file my grievance?

If your grievance is dismissed by the Chief Disciplinary Counsel as an Inquiry, you may amend the dismissed grievance with additional or new information and resubmit it to the Chief Disciplinary Counsel. The amended grievance *must* contain new or additional information not contained in your original grievance. You may amend and resubmit your grievance one time only.

Can I appeal the dismissal of my grievance at this classification stage?

You may appeal the decision of the Chief Disciplinary Counsel to dismiss your grievance by filing an appeal to the Board of Disciplinary Appeals (BODA). The appeal must be in writing on the form provided with the Chief Disciplinary Counsel's notification that your grievance has been dismissed. The appeal must be submitted directly to BODA (*not* to the Chief Disciplinary Counsel) within 30 days from notification of the dismissal. BODA will independently review your grievance to determine whether it states a potential violation of the ethics rules. If BODA grants the appeal and reverses the classification decision, the grievance is referred back to the Chief Disciplinary Counsel for investigation. Following a denial of an appeal by BODA, you may amend and re-file your grievance one time only by submitting new or additional information, as in the preceding section.

What happens if my grievance does state a rule violation?

From this point forward, your grievance will be handled by the Regional Office of Chief Disciplinary Counsel that has appropriate jurisdiction in accordance with Rule 2.11 of the Texas Rules of Disciplinary Procedure. This will be either in Austin, Dallas, Houston, or San

Antonio. You will receive notification of where your grievance will be handled and who to contact if you have questions.

A copy of your complaint is sent to the lawyer who is the subject of the complaint, with instructions to submit a written response to the complaint to the Chief Disciplinary Counsel within thirty days. The Chief Disciplinary Counsel will then conduct an investigation of the matter over the next sixty days, reviewing all of the information received from the complaining party and the accused lawyer and any additional information gathered in order to determine whether there is sufficient cause to believe that professional misconduct occurred. This is referred to as the "Just Cause" investigation. Prior to the finding of just cause, your grievance may be set for an Investigatory Hearing before a local Grievance Committee Panel. If a hearing is set, you will be invited to participate in the Investigatory Hearing. It is possible that your grievance will be resolved through the Investigatory Hearing process. The investigation of the complaint will take place in the Regional Office of the Chief Disciplinary Counsel having authority over the region in which the alleged misconduct occurred.

What happens after the just cause investigation is completed?

If your grievance is not resolved through the Investigatory Hearing process, and the Chief Disciplinary Counsel concludes that there is just cause to believe professional misconduct occurred, the lawyer is notified of what conduct is complained about and what ethical rules are alleged to have been violated. The lawyer is given a choice of whether to have a panel of a grievance committee or a district judge hear the case.

A petition is then filed with either an Evidentiary Panel or a district court by the Chief Disciplinary Counsel on behalf of its client, the Commission for Lawyer Discipline. The case will then be set for trial either before an Evidentiary Panel of a grievance committee or a district court.

What happens if my complaint proceeds to an evidentiary hearing?

An Evidentiary Panel is a panel of a grievance committee composed of lawyer members and non-lawyer members

who hear and consider the evidence and decide whether the lawyer has committed professional misconduct. The admission or exclusion of evidence shall be in the discretion of the Evidentiary Panel chair. After conducting the hearing, the Evidentiary Panel will issue a judgment of its decision within 30 days on whether or not the lawyer is found to have committed professional misconduct. All parties are notified of the Evidentiary Panel's decision.

Can I appeal an Evidentiary Panel's decision if I don't agree with it?

No. Evidentiary decisions are not appealable by the complainant.

What happens if my complaint proceeds to trial in district court?

Evidence in a district court trial may include your testimony, the lawyer's testimony and possibly the testimony of additional witnesses in addition to any documented evidence submitted to the court. The trial court will enter judgment after the close of evidence or after the return of the jury's verdict.

If I disagree with the result reached at a district court trial, can I appeal?

No. District court decisions are not appealable by the complainant.

What happens if just cause is not found?

If the Chief Disciplinary Counsel concludes that just cause does not exist to believe that the lawyer committed professional misconduct, the matter is presented to a Summary Disposition Panel with a recommendation that the complaint should be dismissed. Neither you nor the lawyer has the right to appear before the Summary Disposition Panel. The Panel reviews the complaint, together with any information, documents, and evidence deemed necessary for it to make its ruling. No testimony is taken at the hearing. If the Panel determines the dismissal is appropriate, all parties are notified. There is no appeal from a determination by the Summary Disposition Panel that the complaint should proceed or be dismissed.

What is a Summary Disposition Panel and who is on it?

The Summary Disposition Panel is a panel of a grievance committee that is responsible for deciding whether a complaint should be dismissed based upon the recommendation of the Chief Disciplinary Counsel or should proceed. State Bar grievance committees are composed of volunteer lawyers and members of the public who serve in 49 disciplinary districts across the state. Each committee is composed of 2/3 lawyer members and 1/3 public members. The committees act in panels that are also 2/3 lawyer members and 1/3 public members.

How will I know what happens with the grievance that I file?

You will receive notification in writing about the status of your grievance throughout the grievance process.

What happens to lawyers who have been found guilty of professional misconduct?

That lawyer may receive one or more of the following sanctions, depending upon the severity of the case: 1) a reprimand, which may be public or private; 2) suspension from the practice of law, all or part of which may be probated; or 3) disbarment. Any public sanction an attorney receives for professional misconduct will become a permanent part of the attorney's record.

Does the State Bar offer any other avenue of recourse for a complainant who has a dispute with a lawyer that is not resolved through the attorney disciplinary system?

Possibly. At any stage of the grievance process at which a complainant's grievance is dismissed, the matter is referred to a voluntary mediation and dispute resolution procedure called the "Client Attorney Assistance Program." Should that occur, you will be provided further information about that program.

Can anything be done for clients whose money has been stolen by their attorney?

Yes. The Client Security Fund is a discretionary fund maintained by the State Bar that may provide some relief to clients under certain circumstances. In order to seek

relief, application must be made with the Fund and the applicant must have participated in the attorney discipline process (unless the lawyer is already deceased, disbarred or resigned, or is on an indefinite disability suspension prior to completion of the applicant's complaint against the lawyer). Under certain circumstances, clients may be eligible for financial relief from this source. The Client Security Fund does not address legal malpractice damages, disputes over the amount charged for legal services, dissatisfaction with the outcome achieved by the lawyer, or recovery of monies paid by another lawyer for work that was not done by the lawyer complained about.

What if I believe that I have a claim for legal malpractice?

Neither the State Bar nor the Chief Disciplinary Counsel can advise you regarding what claims, if any, you may have for legal malpractice. The State Bar does not have any ability to pursue or in any fashion become involved in whatever claims you may have with regard to legal malpractice on the part of the lawyer. If you believe you have such a claim, you should seek advice from a private lawyer of your choosing.

Who do I contact if I have other questions about the disciplinary process?

If you have questions prior to filing a grievance, please call the Grievance Information Helpline toll-free at 1-800-932-1900. If you have questions after you have filed a grievance, please call the Chief Disciplinary Counsel's office at 866-224-5999.



**OFFICE OF THE CHIEF DISCIPLINARY COUNSEL
STATE BAR OF TEXAS
GRIEVANCE FORM**

ONLINE FILING AVAILABLE AT <http://cdc.texasbar.com>.

I. GENERAL INFORMATION

Before you fill out this paperwork, there may be a faster way to resolve the issue you are currently having with an attorney.

If you are considering filing a grievance against a Texas attorney for any of the following reasons:

- ~ You are concerned about the progress of your case.
- ~ Communication with your attorney is difficult.
- ~ Your case is over or you have fired your attorney and you need documents from your file or your former attorney.

You may want to consider contacting the Client-Attorney Assistance Program (CAAP) at 1-800-932-1900.

CAAP was established by the State Bar of Texas to help people resolve these kinds of issues with attorneys quickly, without the filing of a formal grievance.

CAAP can resolve many problems without a grievance being filed by providing information, by suggesting various self-help options for dealing with the situation, or by contacting the attorney either by telephone or letter.

I have _____ I have not _____ contacted the Client-Attorney Assistance Program.

If you prefer, you have the option to file your grievance online at <http://cdc.texasbar.com>.

In order for us to comply with our deadlines, additional information/documentation that you would like to include as part of your grievance submission must be received in this office by mail or fax within (10) days after submission of your grievance. This information will be added to your pending grievance. Information received after that timeframe will be returned and not considered. Thank you for your cooperation in this matter.

NOTE: Please be sure to fill out each section completely. Do not leave any section blank. If you do not know the answer to any question, write "I don't know."

II. INFORMATION ABOUT YOU -- PLEASE KEEP CURRENT

- Mr.
 Ms. Name: _____
1. TDCJ/SID # _____
Immigration # _____
- Address: _____

- City: _____ State: _____ Zip Code: _____
2. Employer: _____
Employer's Address: _____

3. Telephone numbers: Residence: _____ Work: _____
Cell: _____
4. Email: _____
5. Drivers License # _____ Date of Birth _____
6. Name, address, and telephone number of person who can always reach you.
Name _____ Address _____
_____ Telephone _____
7. Do you understand and write in the English language? _____
If no, what is your primary language? _____
Who helped you prepare this form? _____
Will they be available to translate future correspondence during this process? _____
8. Are you a Judge? _____
If yes, please provide Court, County, City, State: _____

III. INFORMATION ABOUT ATTORNEY

Note: Grievances are not accepted against law firms. You must specifically name the attorney against whom you are complaining. A separate grievance form must be completed for each attorney against whom you are complaining.

1. Attorney name: _____ Address: _____

City: _____ State: _____ Zip Code: _____

2. Telephone number: Work _____ Home _____ Other _____
3. Have you or a member of your family filed a grievance about this attorney previously?
Yes ___ No ___ If "yes", please state its approximate date and outcome. _____

Have you or a member of your family ever filed an appeal with the Board of Disciplinary Appeals about this attorney?

Yes ___ No ___ If "yes," please state its approximate date and outcome.

-
4. Please check one of the following:
_____ This attorney was **hired** to represent me.
_____ This attorney was **appointed** to represent me.
_____ This attorney was hired to represent **someone else**.

If you hired the attorney, tell us how you met the attorney. Specifically, please provide details about how you came to know and hire this attorney. _____

Please give the date the attorney was hired or appointed. _____

Please state what the attorney was hired or appointed to do. _____

-
5. What was your fee arrangement with the attorney? _____

How much did you pay the attorney? _____

If you signed a contract and have a copy, please attach.
If you have copies of checks and/or receipts, please attach.

Do not send originals.

6. If you did not hire the attorney, what is your connection with the attorney? Explain briefly

7. Are you currently represented by an attorney? _____
If yes, please provide information about your current attorney: _____

8. Do you claim the attorney has an impairment, such as depression or a substance use disorder? If yes, please provide specifics (your **personal** observations of the attorney such as slurred speech, odor of alcohol, ingestion of alcohol or drugs in your presence etc., including the date you observed this, the time of day, and location).

9. Did the attorney ever make any statements or admissions to you or in your presence that would indicate that the attorney may be experiencing an impairment, such as depression or a substance use disorder? If so, please provide details.

IV. INFORMATION ABOUT YOUR GRIEVANCE

1. Where did the activity you are complaining about occur?

County: _____ City: _____

2. If your grievance is about a lawsuit, answer the following, if known:

a. Name of court _____

b. Title of the suit _____

c. Case number and date suit was filed _____

- d. If you are not a party to this suit, what is your connection with it? Explain briefly.

If you have copies of court documents, please attach.

3. Explain in detail why you think this attorney has done something improper or has failed to do something which should have been done. Attach additional sheets of paper if necessary.

Supporting documents, such as copies of a retainer agreement, proof of payment, correspondence between you and your attorney, the case name and number if a specific case is involved, and copies of papers filed in connection with the case, may be useful to our investigation. Do not send originals, as they will not be returned. Additionally, please do not use staples, post-it notes, or binding.

Include the names, addresses, and telephone number of all persons who know something about your grievance.

Also, please be advised that a copy of your grievance will be forwarded to the attorney named in your grievance.

V. HOW DID YOU LEARN ABOUT THE STATE BAR OF TEXAS' ATTORNEY GRIEVANCE PROCESS?

<input type="checkbox"/>	Yellow Pages	<input type="checkbox"/>	CAAP
<input type="checkbox"/>	Internet	<input type="checkbox"/>	Attorney
<input type="checkbox"/>	Other	<input type="checkbox"/>	Website

VI. ATTORNEY-CLIENT PRIVILEGE WAIVER

I hereby expressly waive any attorney-client privilege as to the attorney, the subject of this Grievance, and authorize such attorney to reveal any information in the professional relationship to the Office of Chief Disciplinary Counsel of the State Bar of Texas. I understand that it may be necessary to act promptly to preserve any legal rights I may have, and that commencement of a civil action may be required to preserve those rights.

Additionally, I understand that the Office of Chief Disciplinary Counsel may exercise its discretion and refer this Grievance to the Client-Attorney Assistance Program (CAAP) of the State Bar of Texas for assistance in resolving a subject matter of this Grievance. In that regard, I hereby acknowledge my understanding that such discretionary referral does not constitute the commencement of a civil action and that the State Bar of Texas will not commence any civil action on my part. I acknowledge that it is my responsibility to seek and obtain any necessary legal advice with respect to this matter. I also understand that any information I provide to the State Bar of Texas may be used to assist me and will remain confidential for purposes of resolving the issue(s) described above.

I understand that the Office of Chief Disciplinary Counsel maintains as confidential the processing of Grievances.

I hereby swear and affirm that I am the person named in Section II, Question 1 of this form (the Complainant) and that the information provided in this Grievance is true and correct to the best of my knowledge.

Signature: _____ Date: _____

TO ENSURE PROMPT ATTENTION, THE GRIEVANCE SHOULD BE MAILED TO:

**THE OFFICE OF CHIEF DISCIPLINARY COUNSEL
P.O. Box 13287
Austin, TX 78711
Fax: (512) 427-4169**

EXHIBIT 5

June 19, 2019

I am the Ombudsman for the Attorney Discipline System and was forwarded the letter you sent to the Supreme Court of Texas.

The Deputy Clerk of the Supreme Court of Texas forwarded me your correspondence because my office was created by the Texas Legislature to act as an independent source of information for the public on matters involving the Attorney Discipline System. Specifically, I am:

- **A source of information for the public** – The Ombudsman is tasked with answering questions from the public on the grievance system’s operations, accessing the system, the filing of grievances, and the availability of other State Bar of Texas programs.
- **A monitor of the Attorney Discipline System** – The Ombudsman is responsible for receiving complaints about the system and investigating complaints to make sure the proper procedures were followed. Also, the Ombudsman makes recommendations to the Supreme Court of Texas as well as the State Bar Board of Directors for improvements to the Attorney Discipline System.
- **Independent** – The Ombudsman reports directly to the Supreme Court of Texas and is independent of the State Bar Board of Directors, the Commission for Lawyer Discipline, the Chief Disciplinary Counsel, and the Board of Disciplinary Appeals. This independence allows the Ombudsman to impartially evaluate any complaints from the public about the grievance system and provide reports to the Supreme Court of Texas as an outside party.
- **Confidential** – The Ombudsman cannot disclose any information, proceedings, hearing transcripts, or statements he or she receives, including documents from various State Bar of Texas departments, to any person other than the Chief Disciplinary Counsel.

If you would like more information on my position, it can be found on my website: <http://www.txcourts.gov/organizations/bar-education/ombudsman-for-attorney-discipline>. I have attached a copy of my website for your reference.

Based on your correspondence, the Deputy Clerk believed that I would be the proper person to handle the matter because your complaint deals with a grievance against an attorney. As an initial matter, you mention in your letter that you contacted the State Bar of Texas and “received a generic response that they will follow up.” By that, do you mean that you filed a grievance against the attorney in question with the Chief Disciplinary Counsel’s office? If that is the case and the matter is still pending with them, unfortunately I am prohibited by statute from getting involved at this point. In case you have not filed an official grievance with the Chief Disciplinary Counsel’s office yet, below is information on that office and how to file a grievance.

Filing a Grievance through the Chief Disciplinary Counsel

The Chief Disciplinary Counsel (CDC) is the main division that is responsible for the screening, investigation and litigation of allegations of professional misconduct against attorneys. If you decide to file a formal grievance through the CDC, the first step is to complete a grievance form through the State Bar of Texas' online submission system. When filling this out, keep in mind that you should fill out the form completely with as much information as you have. You should attach copies (not originals) of any documents that you believe will help explain your grievance and mail copies of your documents to:

State Bar of Texas
Chief Disciplinary Counsel's Office
P.O. Box 13287
Austin, Texas 78711
Phone: (877) 953-5535
Fax: (512) 427-4169

You can find more information about the process on the State Bar of Texas website: www.texasbar.com. I suggest that you read everything thoroughly before submitting any grievance but if you are ready to get started with the process, here is the link for the online submission form: <https://cdc.texasbar.com/cdc>. I have attached a brochure as well as a complaint form for your reference.

Your reference to contacting the State Bar of Texas in your letter could have also referred to working with the State Bar of Texas' Client-Attorney Assistance Program (CAAP). Similarly to the CDC, if you are in the middle of working with them, I will not be able to get involved. In case you are not familiar with CAAP, I have included information about the program below.

Working with the Client-Attorney Assistance Program

CAAP can assist you if you are having a problem communicating with your lawyer; a disagreement or misunderstanding about your case; concerns about your bill; or trouble finding or contacting your lawyer. CAAP is the informal option for those wishing to resolve their issues without filing a formal grievance against their attorney. Therefore, this option will not lead to any sanctions against the attorney. They can be contacted here:

Client-Attorney Assistance Program
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
Phone: 1-800-932-1900 or 1-800-204-2222, ext. 1790 Fax: 512-427-4442
Email: caap@texasbar.com
Website:

<https://www.texasbar.com/Content/NavigationMenu/ForThePublic/ProblemswithanAttorney/CAAP/default.htm>

I have attached a brochure and checklist for CAAP for you to review.

In the event that you have already filed a grievance and the matter is concluded (meaning a final decision has been reached and there is no chance for appeal), I can review the matter to ensure that proper procedures were followed. I will caution that while I will review the grievance process, I am not allowed to draft a complaint for you, act as your advocate or represent you, or reverse or modify a finding or judgment in any disciplinary proceeding.

Please let me know if your grievance is closed and you would like me to review it. Only at that point will I request your file and begin to look it over for procedural accuracy. Other than that, if you have any questions about the grievance process or comments about the disciplinary system, feel free to contact me.

Sincerely,

Stephanie Lowe

Ombudsman
Attorney Discipline System
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487
stephanie.lowe@texasbar.com

EXHIBIT 6

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

July 30, 2018

The Office of the Chief Disciplinary Counsel of the State Bar of Texas has received your grievance against the above named lawyer.

Lawyers licensed in Texas are governed by the Texas Disciplinary Rules of Professional Conduct, and may only be disciplined when their conduct is in violation of one or more of the disciplinary rules. We have concluded that the conduct you described is not a violation of the disciplinary rules. Thus, your grievance has been dismissed.

If you would like further review of your grievance, you may choose one of the following two options:

1. Amend your grievance and re-file it. It is not necessary to list the disciplinary rules you believe were violated. You have twenty (20) days from your receipt of this letter to re-file your amended grievance.
- OR**
2. Appeal this decision to dismiss your grievance to the Board of Disciplinary Appeals. You must submit your appeal directly to the Board of Disciplinary Appeals by using the enclosed form. You have **thirty (30) days** from your receipt of this letter to appeal this decision.

If you choose not to pursue either of the two options above, you may consider contacting the Client-Attorney Assistance Program (CAAP). Pursuant to the State Bar Act, the State Bar of Texas maintains the Client-Attorney Assistance Program (CAAP), which you may have contacted prior to filing your grievance. Accordingly, please be advised that even after a grievance has been dismissed, CAAP can still attempt to assist you through alternative dispute

P. O. Box 12487, Austin, TX 78711, (512) 427-1350, (877) 953-5535, fax: (512) 427-4167

resolution procedures unless the attorney at issue is *deceased, disbarred, suspended or not your lawyer*. **CAAP is not a continuation of the attorney disciplinary process, and participation by both you and your attorney is voluntary.** Should you wish to pursue that option, CAAP may be reached at 1-800-932-1900.

Please know that the Office of the Chief Disciplinary Counsel maintains confidentiality in the grievance process as directed by the Texas Rules of Disciplinary Procedure.

Sincerely,

Enclosures: BODA Appeal Form

Disciplinary System Questionnaire

Your completion of this questionnaire is purely voluntary. Any responses you provide will be used to improve the attorney disciplinary system in Texas. Thank you for your participation.

1. Are you a former client of the respondent lawyer? YES NO
2. Was your grievance dismissed? YES NO
 - a. If your grievance was dismissed, did you appeal? YES NO
 - b. Did BODA reverse the dismissal? YES NO
3. Did your grievance result in a sanction against the respondent lawyer? YES NO
4. Was your grievance heard by: AN EVIDENTIARY PANEL A DISTRICT COURT
5. If your complaint was heard by an evidentiary panel, how would you describe your treatment by the evidentiary panel?

6. How long did it take to reach a conclusion about your grievance? less than 90 days 90-179 days 180-260 days more than 360 days
7. Did your grievance involve a CRIMINAL MATTER CIVIL MATTER
8. If your matter was criminal in nature, was your attorney: APPOINTED HIRED
9. If your matter was criminal in nature, did you receive a sentence that included jail or penitentiary time? YES NO
10. Which regional office of the chief disciplinary counsel's office processed your grievance?
 Austin Dallas Houston San Antonio
11. Did you ever talk with an employee of that regional office? YES NO
 - a. If so, did you talk with: staff an attorney both
 - b. What were the names of the employees that you spoke with?

12. How would you describe your treatment by whomever you talked with?

13. Do you believe the grievance system is fair? YES NO
 - a. If you answered no, why do you think the system is unfair?

14. Do you have any suggestions for improving the grievance system?

Return to: Office of the Chief Disciplinary Counsel
State Bar of Texas
Post Office Box 12487
Austin, Texas 78711

Cuestionario del Sistema Disciplinario

Su realización de este cuestionario es estrictamente voluntaria. Las respuestas que usted proporcione serán utilizados para mejorar el sistema disciplinario de los abogados de Texas. Gracias por su participación.

1. ¿Es usted un cliente anterior del abogado demandado? Sí No
2. ¿Fue sobreseída (rechazada) su queja? Sí No
 - a. Si su queja fue sobreseída, ¿inició usted una apelación del caso? Sí No
 - b. ¿Fue revertido el sobreseimiento, de parte de BODA? Sí No
3. ¿Resultó su queja en una sanción contra el abogado demandado? Sí No
4. ¿Fue escuchado su queja por: UN PANEL DE EVIDENCIA UN TRIBUNAL DEL DISTRITO
5. Si su queja fue escuchada por un panel de evidencia, ¿cómo describiría usted su tratamiento por parte del panel de evidencia? _____
6. ¿Cuanto tiempo duró el proceso de llegar a una conclusión de su queja? menos de 90 días 90-179 días 180-260 días más de 360 días
7. ¿Involucró su queja un: ASUNTO CRIMINAL ASUNTO CIVIL?
8. Si su asunto fue criminal en naturaleza, fue su abogado: DESIGNADO POR EL TRIBUNAL EMPLEADO
9. Si el asunto fue criminal en naturaleza, ¿recibió usted un castigo que incluyó tiempo de cárcel or de institución penitenciaria? Sí No
10. ¿Cual oficina regional del primer abogado disciplinario procesó su queja? Austin Dallas Houston San Antonio
11. ¿Habló usted una vez con en empleado de esa oficina regional Sí No
 - a. En caso del afirmativo, ¿Habló usted con: Personal un abogado ambos
 - b. ¿Cuáles son los nombres de los empleados con quien usted se comunico?

12. ¿Como describiría usted su tratamiento por la persona con quien usted habló?

13. ¿Cree usted que el sistema de quejas es justo Sí No
 - a. Si su respuesta es 'no', ¿porque cree usted que el sistema es injusto?

14. ¿Tiene usted alguna sugerencia para mejorar el sistema de quejas?

Volver a: Office of the Chief Disciplinary Counsel
State Bar of Texas
Post Office Box 12487
Austin, Texas 78711

EXHIBIT 7

**STATE BAR of TEXAS**

Grievance Procedure

Those who believe they have been a witness to attorney misconduct – clients, members of the public, members of the legal community, and judges – have the right to file a grievance against a Texas attorney. The grievance form is available on the State Bar website (in Spanish and English), in each of CDC's regional offices, through the State Bar's Client Attorney Assistance Program (CAAP), and at courthouses, law libraries, legal aid organizations and local bar associations across the State.

CLASSIFICATION

The filing of a written grievance with any one of the Chief Disciplinary Counsel's regional offices initiates the disciplinary process. Lawyers are subject to discipline only if they have violated the ethics rules ([Texas Disciplinary Rules of Professional Conduct](#)). Upon receipt of the grievance, the CDC determines whether the grievance, on its face, alleges professional misconduct. This determination is referred to as classification of the grievance and is made within 30 days of the filing of the grievance.

Advertisement

If the grievance does not allege professional misconduct, it is classified as an Inquiry and dismissed. If the grievance alleges professional misconduct, it is classified as a Complaint and sent to the respondent lawyer for a response.

WHY ARE GRIEVANCES DISMISSED?

- Grievances are dismissed for various reasons, including the following:
- The grievance concerns the outcome of a case but does not specify a violation of an ethics rule.
- The grievance does not involve a lawyer's conduct in his or her professional capacity.
- The grievance is filed too late.

- The grievance is duplicative or identical to a previous filing.
- The grievance concerns a lawyer who has been disbarred, has resigned, or is deceased.
- The grievance concerns a person who is not licensed as an attorney (handled by the Unauthorized Practice of Law Committee).
- The grievance is filed against a sitting judge (handled by the State Commission on Judicial Conduct).

The person who filed the grievance has the right to appeal the CDC's classification decision to dismiss the grievance as an Inquiry to the Board of Disciplinary Appeals (BODA). BODA is an independent 12-attorney tribunal, appointed by the Supreme Court of Texas. When BODA reverses a classification decision, the grievance is sent back to the CDC and is processed as a Complaint.

JUST CAUSE DETERMINATION

Once the grievance is classified as a Complaint, it is sent to the respondent lawyer who has 30 days from receipt to respond. Within 60 days of the response deadline, the CDC, through its investigation, must determine whether there is Just Cause to believe that professional misconduct occurred. This investigation may include the following:

- Requesting additional information from the complainant
- Obtaining information from corroborative witnesses
- Receipts
- Hourly records or billing statements
- Correspondence to and from client
- Message slips, telephone logs, or records of long-distance telephone calls
- Court records, such as pleadings, motions, orders and docket sheets
- Copies of settlement checks and/or disbursement statements
- IOLTA or trust account records, such as monthly bank statements, deposit slips, deposit items and disbursement items
- State Bar Membership Department records including records of current or past administrative suspensions
- Client file
- Witness interviews and obtaining sworn statements

If the Chief Disciplinary Counsel determines that there is no Just Cause to proceed on the Complaint, the case is presented to a Summary Disposition Panel, which is a panel of local grievance committee members composed of two-thirds lawyers and one-

third public members. The Summary Disposition Panel is an independent decision maker and has the discretion to either accept or reject the CDC's determination.

All information and results of the CDC's investigation is presented to the panel at a docket hearing without the presence of either the complainant or respondent. If the panel accepts the CDC's determination, the Complaint will be dismissed. If the panel rejects the CDC's determination, the panel votes to proceed on the Complaint.

TRIAL OF THE COMPLAINT

If the CDC finds Just Cause or the Summary Disposition Panel votes to proceed on the Complaint, the respondent lawyer is given written notice of the allegations and rule violations. The respondent has 20 days to notify the CDC whether he or she chooses to have the case heard before an evidentiary panel of the grievance committee or by a district court, with or without a jury. This choice is referred to as the respondent's election. A respondent who fails to elect will have the case tried before an evidentiary panel of the grievance committee.

Evidentiary panel hearings are confidential and allow for a private reprimand, the least sanction available, to be imposed. District court proceedings are public and the least sanction available is a public reprimand. In both types of proceedings, the parties are the Commission for Lawyer Discipline represented by the Chief Disciplinary Counsel, and the respondent lawyer. It is the Commission's burden to prove the allegations of professional misconduct by a preponderance of the evidence.

If no professional misconduct is found, the case is dismissed. If professional misconduct is found, a separate hearing may be held to determine the appropriate discipline. In evidentiary panel proceedings, the panel may also find that the respondent suffers from a disability and forwards its finding to the Board of Disciplinary Appeals.

Advertisement

[{Back to top}](#)

EXHIBIT 8

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

August 14, 2018

Upon completion of its investigation of your grievance, the Chief Disciplinary Counsel has determined that there is no just cause to believe that the above named lawyer has committed professional misconduct.

In accordance with the Texas Rules of Disciplinary Procedure, following this determination by the Chief Disciplinary Counsel your complaint was presented to a Summary Disposition Panel of the District 5 Grievance Committee. The Panel which is comprised of volunteer lawyers and public members has the option to dismiss the complaint or vote to proceed should they believe the case should go forward. This is solely their decision to make on any complaint presented to them. The Panel has voted to dismiss the complaint after reviewing all the evidence submitted and obtained during the investigation. Please know that the Office of the Chief Disciplinary Counsel maintains confidentiality in the grievance process as directed by the Texas Rules of Disciplinary Procedure.

Although there is no appeal of the Panel's decision to dismiss your grievance, the State Bar of Texas maintains the Client-Attorney Assistance Program (CAAP), which you may have contacted prior to filing your grievance. Please be advised that even after a grievance has been dismissed, CAAP can still attempt to assist you through alternative dispute resolution procedures unless the attorney at issue is *deceased, disbarred, suspended or not your lawyer*. **CAAP is not a continuation of the attorney disciplinary process, and participation by both you and your attorney is voluntary.** Should you wish to pursue that option, CAAP may be reached at 1-800-932-1900.

Sincerely,

4801 Woodway Drive, Suite 315-W Houston, Texas 77056
Phone: 713-758-8200 Fax: 713-758-8292

Disciplinary System Questionnaire

Your completion of this questionnaire is purely voluntary. Any responses you provide will be used to improve the attorney disciplinary system in Texas. Thank you for your participation.

1. Are you a former client of the respondent lawyer? YES NO
2. Was your grievance dismissed? YES NO
 - a. If your grievance was dismissed, did you appeal? YES NO
 - b. Did BODA reverse the dismissal? YES NO
3. Did your grievance result in a sanction against the respondent lawyer? YES NO
4. Was your grievance heard by: AN EVIDENTIARY PANEL A DISTRICT COURT
5. If your complaint was heard by an evidentiary panel, how would you describe your treatment by the evidentiary panel?

6. How long did it take to reach a conclusion about your grievance? less than 90 days 90-179 days 180-260 days more than 360 days
7. Did your grievance involve a: CRIMINAL MATTER CIVIL MATTER
8. If your matter was criminal in nature, was your attorney: APPOINTED HIRED
9. If your matter was criminal in nature, did you receive a sentence that included jail or penitentiary time? YES NO
10. Which regional office of the chief disciplinary counsel's office processed your grievance?
 Austin Dallas Houston San Antonio
11. Did you ever talk with an employee of that regional office? YES NO
 - a. If so, did you talk with: staff an attorney both
 - b. What were the names of the employees that you spoke with?

12. How would you describe your treatment by whomever you talked with?

13. Do you believe the grievance system is fair? YES NO
 - a. If you answered no, why do you think the system is unfair?

14. Do you have any suggestions for improving the grievance system?

Return to: Office of the Chief Disciplinary Counsel
State Bar of Texas
Post Office Box 12487
Austin, Texas 78711