

TOPIC REPORT TO THE SUPREME COURT OF TEXAS BY THE GRIEVANCE OVERSIGHT COMMITTEE

The Grievance Oversight Committee (“GOC” or “Committee”) provides this report in response to the Court's request that the Committee consider whether the Texas attorney discipline system needs to be amended because of perceived abuse for vendettas.

Since the Court's request, the Committee met with members of the public; attorneys; judges; law school professors; representatives of public interest groups; persons involved in grievance proceedings as grievance panel members; respondents and representatives of respondents; personnel with the Chief Disciplinary Counsel of the State Bar of Texas (“CDC”), the State Bar of Texas Executive Office, and some of the Board of Directors. The Committee also reviewed the State Bar Act, Sunset Commission Reports, Texas Rules of Disciplinary Procedure, Texas Disciplinary Rules of Professional Conduct, research and recommendations provided to the Committee, along with additional research of processes in other states and other Texas professions.

ISSUE

Whether those who file grievances should be required to have personal knowledge of, or a particularized connection to, the subject matter of the grievance. In other words, should a grievant with no particular connection to the grieved conduct be able to invoke the lawyer discipline system?

PROPOSED RECOMMENDATION FOR A STANDING REQUIREMENT

The primary proposal presented to the GOC to curb improperly motivated bar grievances is to add a standing requirement to the Texas Rules of Disciplinary Procedure. This proposal focuses on the fact that in the present system, even if a grievance is ultimately dismissed, the State Bar of Texas (“Bar”) must spend time and resources analyzing the claim and collecting information, and the attorney may be required to spend time and resources responding. A standing requirement could limit any abuse of the bar grievance process, keep the process open to certain members of the public, and still provide needed information to the Bar about misconduct. Proponents assert it would be fairer to lawyers, better conserve the integrity of the profession from politics, and be in keeping with the Legislature’s and Bar’s intentions of conserving time and resources. The focus under this proposal is on injurious attorney misconduct, granting access to the attorney grievance system only to those who can articulate in their complaint their personal harm caused by attorney misconduct.

In support of the change, advocates point out there is no data showing the connection between the complainant and respondent. They also emphasize that 70% of grievances filed are dismissed at the classification stage as inquiries;¹ 72% of those classified as complaints are eventually dismissed by a summary disposition panel; and of those moving onto an Investigatory Hearing

¹ Dismissals at this stage do not require any response by the attorney. The respondent attorney generally learns of the filing by receiving notice of the dismissal.

Panel, 22% more are dismissed.² This is seen as a waste of Bar resources, which could be solved by adding a harm requirement--a standing requirement--to the grievance process. The proposal limits grievance filings to harmed clients of the lawyer; the premise being that if the client is not harmed, the time or resources of the bar grievance process should not be wasted.

GOC RESPONSE: A STANDING REQUIREMENT WOULD BE DISRUPTIVE AND INCONSISTENT WITH A SELF-REGULATING BAR'S GOAL OF PROTECTING THE PUBLIC

While the grievance process should never be used for vendettas, there is no support in the history of the Bar, the State Bar Act, the disciplinary rules or procedures for upending the entire system to lower the standard of professional ethics to only regulate attorney behavior that clearly harmed a client who is capable of and willing to complain. So drastically reducing those able to file a grievance against a Texas attorney would be inconsistent with a transparent and accessible grievance system.

State Bar Act

Since the initial meeting of the Texas Bar Association on July 18, 1882, "the objectives of the association were 'to cultivate the science of jurisprudence, to promote reforms in the law, to facilitate the administration of justice and to elevate the standards of integrity, honor, and courtesy in the legal profession.' The constitution of the association created seven committees including the Committee on Grievance and Discipline."³ In 1929, the first bill introduced to the legislature seeking to create a self-governing bar "was strongly opposed as favoring the interest of lawyers."⁴ When the State Bar Act (the "Act") was signed into law in 1939, it instructed that within six months, "and from time to time thereafter, as to the Court may seem proper," "the Supreme Court of Texas shall prepare and propose rules and regulations for disciplining, suspending, and disbaring attorneys at law; for the conduct of the State Bar; and prescribing a code of ethics governing the professional conduct of attorneys at law."⁵ The Act is provided "in aid of the judicial department's powers under the constitution to regulate the practice of law."⁶ "In order that the public responsibilities of the legal profession be more effectively discharged" part of the Bar's purpose is "to foster and maintain high ideals and integrity, competence in public service, and high standards of conduct."⁷ There is nothing in its language that couches enforcement of the high standards of conduct expected within harm — except requiring interim suspension where a threat of immediate irreparable harm is posed.⁸ Rather, the Act provides floors for some disciplinary

² Comm. for Lawyer Discipline Annual Rep. Jun. 1, 2021 - May 31, 2022. Pgs. 13-16.
https://www.texasbar.com/AM/Template.cfm?Section=Content_Folders&ContentID=57786&Template=/CM/ContentDisplay.cfm.

³ SBOT, Staff Rep. to the Sunset Revisory Cmm'n., June 28, 1979, pg. 4.
<https://www.sunset.texas.gov/public/uploads/files/reports/State%20Bar%20of%20Texas%20Staff%20Report%201978%2066%20Leg.pdf>.

⁴ *Id.* at 5.

⁵ Texas Bar Journal, 'A Fresh Perspective,' Vol. 77 No. 4, April 2014, pg. 320-1.
<https://www.texasbar.com/AM/Template.cfm?Section=TableofContents&Template=/CM/ContentDisplay.cfm&ContentID=25602>.

⁶ Tex. Gov't Code § 81.011(b).

⁷ *Id.* § 81.012.

⁸ *Id.* § 81.072(b)(9).

responses by grievance committees, and the definitions of complaint and inquiry presume the information provided may not be true.⁹

Texas Disciplinary Rules of Professional Conduct

Looking next at the rules the Supreme Court created, the Preamble of the Texas Disciplinary Rules of Professional Conduct (“Rules”) provides that “[t]he legal profession has a responsibility to assure that its regulation is undertaken in the public interest...”¹⁰ Only the first category of rules focuses on the relationship between the lawyer and client, with the other categories covering the lawyer's role as counselor and advocate; attorney responsibilities within law firms, associations, and public service; along with non-client relationships and maintaining the integrity of the profession. Rule 8.03 requires attorneys to report on other attorneys in certain situations and outlines when attorneys must report on themselves.¹¹ Comments to the rule provide that this is required as a self-regulated profession and discuss the balance necessary to enforce such a rule, limiting “the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent.”¹² The rule and comments create an obligation on all Texas attorneys with the protection of the public as the stated motivation. As the Preamble outlines, failure to ensure peers comply with minimum disciplinary standards compromises the independence of the profession.¹³ To add a standing or harm requirement as a prerequisite for filing an attorney grievance contravenes the stated purpose of the rules and obfuscates Rule 8.03,¹⁴ as well as several other rules.

The Texas Rules of Disciplinary Procedure

The Texas Rules of Disciplinary Procedure (“TRDP”) adopted by the Supreme Court likewise are focused on attorney misconduct versus a showing of harm. The TRDP specifically state that “[t]he purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.”¹⁵ Harm is only mentioned in the rules in four places: interim suspension, disability probation, the grievance referral program, and the imposition of sanctions. As prescribed by the Act, if irreparable harm is posed to clients or prospective clients, interim suspension is required.¹⁶ An attorney may be placed on disability probation if the attorney can show, among other requirements, the unlikelihood of harm to the public during the period of rehabilitation.¹⁷ Whether or not the misconduct caused substantial harm to a client or complainant is just one of the factors considered in determining

⁹ *Id.* §§ 81.073(a)(1) and (2)(A), 81.072(b)(11).

¹⁰ Tex. Disc. R. Pro. Conduct Preamble par. 8 (hereinafter “TDRPC”).

¹¹ The Committee heard from several parties that Rule 8.03 is aspirational only as lawyers rarely report grievances as to other lawyers. The Committee also heard from both lawyers who had grievances filed against them by other lawyers, and lawyers who had reported the conduct of their peers. Since the CDC does not currently track who files grievances, it is not possible to determine how often this occurs.

¹² TDRPC R. 8.01, cmts. 1, 2, 4.

¹³ *Id.* at Preamble par. 8.

¹⁴ Tex. Rules Disciplinary P. R. 8.03 is part of the ABA Model Rules and is found in many state bar disciplinary rules.

¹⁵ Tex. Rules Disciplinary P. R. 15.01(A).

¹⁶ *Id.* at 2.14(C).

¹⁷ *Id.* at 12.06(F)(2).

whether an attorney is eligible for the Grievance Referral Program.¹⁸ When imposing sanctions, the word “injury” is used and defined as “harm to a client, the public, the legal system, or the profession which results from a Respondent’s misconduct.”¹⁹ Injury becomes one of four general factors used to determine the appropriate sanction.²⁰ The range of sanctions are organized by categories of misconduct: violation of duty owed to clients, the legal system, the public, and other duties as a professional. Generally, if there is little to no injury or potential injury to a client, the public, the legal system, or the profession, a private reprimand is appropriate.

Texas Lawyers Creed

When the Supreme Court adopted the Texas Lawyer’s Creed (“Creed”) in 1989, the Court reminded all attorneys that “[i]n fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession’s broader duty to the legal system.”²¹ The Creed is organized by duties to the legal system, clients, opposing counsel, and judges. Though aspirational, the Creed’s two main goals were “to counteract abusive tactics in litigation” and “to improve generally the image of lawyers with the public.”²² The opening paragraph of the Creed proclaims that every lawyer in the State of Texas is entrusted by the people of Texas to preserve and improve our legal system.²³ The Order closes with the reminder “that the practice of law is a profession. As members of a learned art we pursue a common calling in the spirit of public service.”²⁴ Initiating a standing or harm requirement in the Texas grievance system is counter to the aspirations outlined in the Creed, and would signal to the public that attorneys are no longer willing to openly regulate our profession.

Sunset Advisory Commission

The Sunset Review Process was created as part of the Texas Legislature’s aim to ensure state agencies and programs are needed to serve and protect Texans. The Bar has gone through four different Sunset Reviews beginning in 1978, and in all Sunset Reports (“Reports”), there has been a focus of balancing the professional interests of attorneys with the duty of protecting the public.

1978 Sunset Review: The first Report from the Sunset Advisory Commission (“Commission”) focused most of its content on the creation and structure of the Bar, pursuant to the Act, and its unique status of being placed under the purview of the Supreme Court of Texas.²⁵ Inherent in the oversight powers was a rulemaking authority that included rules on disciplining attorneys.²⁶ Of

¹⁸ *Id.* at 16.02(E).

¹⁹ *Id.* at 1.06(S).

²⁰ *Id.* at 15.02.

²¹ Order of the Supreme Court of Texas and the Court of Criminal Appeals promulgating and adopting the Texas Lawyers Creed: A Mandate for Professionalism (Nov. 7, 1989), par. 1.

²² Alicia M. Grant, *The Texas Lawyer’s Creed: Exploring Its Origin and Impact Over the Last Quarter Century*, 6 St. Mary’s J. on Legal Malpractice & Ethics 120 (2016), FN 3, citing Charles F. Herring, Jr., *Texas Legal Malpractice & Lawyer Discipline* 675 (13th ed. 2014).

²³ The Texas Lawyers Creed: A Mandate for Professionalism (Nov. 7, 1989), par. 1.

²⁴ Order of the Supreme Court of Texas and the Court of Criminal Appeals promulgating and adopting the Texas Lawyers Creed: A Mandate for Professionalism (Nov. 7, 1989), par. 6.

²⁵ Tex. Sunset Advisory Comm’n, *Sunset Rev., Staff Rep. with Final Results*, July 28, 1978 (hereinafter “1978 Report”).

²⁶ *Id.* at 6.

special concern to the Commission was the self-regulating nature of the profession which at that time was left entirely to local volunteer grievance committees who reported to no one and were not required to keep any records.²⁷ This left the Bar with no way to ascertain if it was effective in disciplining its members. The complaint process was also noted to be unduly burdensome on the complainant by requiring a great deal of detail in the application process. According to the Commission, such "formalities not directly required under law or court rules, when closely scrutinized, may be found to have potentially restrictive effects on the interests of the public in seeking answer to questions related to the professional conduct of attorney practitioners."²⁸ It is clear from this language that any recommended action that the Bar were to take had to always remain vigilant of the public's right to question any act of attorney misconduct. The less barriers to that right, the better the chances of ensuring enforcement of the disciplinary rules within professionals who touted self-regulating.

1990 Sunset Review: The next time that the Commission reviewed the Bar there was a general counsel's office that centralized the oversight of the disciplinary system and maintained better recordkeeping on grievances. Instead of finding a 90% dismissal rate with limited reporting requirements,²⁹ the counsel's office had statistics that showed a 40% dismissal rate.³⁰ But even with an increased number of prosecutions, the Commission remained vigilant on public protection. An entire Issue of its Report was dedicated to the needs of the Bar to increase its efforts "to improve the public's awareness of the complaint process."³¹

2002 Sunset Review: The 2002 Report was almost entirely on the grievance process, with four of its five issues or recommendations focusing on the topic.³² The number of dismissals was scrutinized once more but not as a sign of an abuse of the system. Instead, it was seen as a need to provide for low-level cases that did not require the volunteer resources of a 6-member hearing panel. Referral to the Client-Attorney Assistance Program ("CAAP") was the highlighted solution.³³ The Commission believed that support and use of CAAP was critical, and its development needed to be a priority by the Bar because CAAP offered a way to focus on non-disciplinary issues and thereby allow the Bar to focus on more serious disciplinary violations without jeopardizing public protection.

2017 Sunset Review: In the 2017 Report, public protection was made a separate Issue.³⁴ The Commission again highlighted the need to use diversionary programs like the Grievance Referral

²⁷ *Id.* at 34.

²⁸ *Id.* at 92.

²⁹ *Id.* at 101.

³⁰ Tex. Sunset Advisory Comm'n, *Sunset Rev., Staff Rep. with Final Results*, July 1990 (hereinafter "1990 Report"), pg. 10.

<https://www.sunset.texas.gov/public/uploads/files/reports/State%20Bar%20of%20Texas%20Staff%20Report%201991%2072%20Leg.PDF>.

³¹ *Id.* at 31-4.

³² Tex. Sunset Advisory Comm'n, *Sunset Rev., Staff Rep. with Final Results*, Mar. 2002 (hereinafter "2002 Report").

<https://www.sunset.texas.gov/public/uploads/files/reports/State%20Bar%20of%20Texas%20Staff%20Report%202003%2078%20leg.pdf>.

³³ *Id.* at Issue 4, pp. 31-6.

³⁴ Tex. Sunset Advisory Comm'n, *Sunset Rev., Staff Rep. with Final Results*, June 2017 (hereinafter "2017 Report"), Issue 2, pp. 23-38.

Program ("GRP")³⁵ and recommended transparency in disciplinary sanction guidelines.³⁶ It asserted that not enough information is provided to the public, reducing transparency of the complex attorney discipline system.

Every single Report noted the unique position of the Bar as self-regulated, with the 2017 Report calling the Bar “a clear outlier when compared to other Texas occupations” and focused on “strengthening the State Bar’s public protection mission.”³⁷ With nearly four decades of legislative oversight repeating this sentiment, it is clear that a move to restrict access to the Texas attorney grievance process would be rebuked by the Commission.

Other Texas Professions

In the Committee’s cursory review of other Texas professions, the Committee could find no standing requirement to file a complaint against any other Texas profession.

- “Anyone may file a complaint with the Texas Medical Board against a Physician, either an M.D. or D.O., a Physician’s Assistant, Acupuncturist, Respiratory Care Practitioner, Medical Radiological Technologist, Medical Physicist or Perfusionist. Complaints may also be filed regarding the unlicensed practice of medicine or corporate practice of medicine.”³⁸
- “Anyone can file a complaint against a [Texas Real Estate Commission] license holder, even other license holders.”³⁹
- “The board or any person may initiate a proceeding under this subchapter by filing with the board a complaint against a nurse.”⁴⁰
- “Complaints against a person or entity regulated by the Department [...] are accepted in all forms, and under all circumstances, [as long as filed within the two year statute of limitations].”⁴¹ When a complaint is received from a consumer or other member of the public, the complaint is assigned to the intake section for review. A large volume of complaints arise from Texas Department of Licensing and Regulation staff, known as “Department complaints” which may be processed similar to a consumer complaint, or may require specialized procedures.⁴²

While other professions do not lend themselves to the same risk for abuse of the grievance process due to vendettas as the legal profession, especially when considering the unique status of Texas attorneys as self-regulated, it necessitates a fully accessible and transparent grievance system.

https://www.sunset.texas.gov/public/uploads/files/reports/State%20Bar%20of%20Texas%20and%20Board%20of%20Law%20Examiners%20Staff%20Report%20with%20Final%20Results_6-21-17_0.pdf

³⁵ *Id.* at 29.

³⁶ *Id.* at 30.

³⁷ 2017 Report, pg. A1.

³⁸ Texas Medical Board, Physician Assistant Board, State Board of Acupuncture Examiners / Complaints. <https://www.tmb.state.tx.us/page/complaints>.

³⁹ Texas Real Estate Commission /How to File a Complaint. <https://www.trec.texas.gov/public/how-file-complaint#Anchor2>.

⁴⁰ Tex. Occ Code § 301.457(a).

⁴¹ Tex. Ad. Code. § 60.200(a).

⁴² Texas Department of Licensing and Regulation / Complaint Investigation and Resolution. <https://www.tdlr.texas.gov/investigation.htm>.

Other State Bars

The Committee did not find any other state with a standing requirement based on the directions to and availability of the grievance form to the public. Those proposing New Hampshire as a model also reported that they were unable to find another state with such a requirement. The Committee believes that self-regulation carries special responsibilities. To limit or discourage opportunities to penalize corruption diminishes the public's trust in the legal system, harming both the profession and those in need of its services.

GOC EVALUATION OF THE NEW HAMPSHIRE MODEL

New Hampshire has a broad standing requirement:

“With the exception of an attorney discipline office-initiated inquiry or a referral by a judge or attorney, it must be filed by a person who is directly affected by the conduct complained of or who was present when the conduct complained of occurred and contain a statement establishing these facts.”⁴³

Those with standing to file a grievance include the disciplinary office, judges, attorneys, persons directly affected, and eyewitnesses; there are few excluded in this standing requirement. Additionally, the grievance form is provided to the general public and weeding out by standing is done at the classification stage. This would not provide a resource savings to the current Texas classification process, and the GOC sees no advantage to revamping the Texas grievance system to mimic that of New Hampshire.

ADDING A HARM REQUIREMENT HARMS THE PUBLIC

Trust in the legal system is ensured by being aware that our responsibilities can create a tension that conflicts with not only a client's interests, but also with “the legal system and [...] the lawyer's own interests.”⁴⁴ Lowering standards of conduct by creating a harm requirement creates fertile ground for emboldening attorneys prone to take advantage of the vulnerable.

Responsibility to the Victim as a Client

The profession's duty to society is best protected by allowing other advocates to bring to light the harm caused by those in the profession who take advantage of vulnerable clients. It may be the domestic violence shelter advocate who can report a victim's statement that her attorney asked for a sexual relationship as a form of payment for fees, a violation of the prohibition against unconscionable fees.⁴⁵ It may be the social worker who notices that an attorney ad litem in a child's welfare case never met with their client before trial, a violation of diligent representation through communication.⁴⁶ It may be the Veteran's Administration advocate for a veteran who notices that after a successful appeal of benefits, no monies are received by the client and therefore reports a possible violation of the duty of safekeeping a client's property, which uncovers a history of trust

⁴³ N.H. R. of Pro. Att. Disc. Sys. r. 37A(II)(a)(3)(B)(ii).

⁴⁴ TDRPC, Preamble, par. 7.

⁴⁵ *Id.* § 1.04.

⁴⁶ *Id.* §§ 1.01 and 1.03.

account violations.⁴⁷ Adding a harm or standing requirement in the above examples only adds a barrier to justice for some of the most vulnerable members of society.

Understanding Professional Standards

Chapter 7 Rules on advertisement and solicitation can create a serious debate with practitioners that those outside of the profession would not care to take part in. That is because of the intricacies and nuances of the Rules which are usually best interpreted by those practicing law. By example, a lower-middle income neighborhood may not know where to access resources for choosing an attorney when needed. If they look at the attorney billboard in their neighborhood that boasts a large compensation award, they may focus on the number and nothing else. What they will never know is that the award was never collected since the defendant was judgment-proof or did not take part in the trial and the award was obtained by default. It will be a rare member of that community who will know that such an advertisement is a violation of the Rule regarding Communications Concerning a Lawyer's Services.⁴⁸

Shelter For Unscrupulous Client-Attorney Relationship

The effects of an unscrupulous or gaming attorney who violates the Rules can impose upon the profession a reputation that it is not the prevailing rule of law but instead an abuse of process. As similarly minded clients meet such attorneys, a violation of the Rules to gain an advantage in their case will become part of the litigation tactic. If a harm requirement for standing is added, there will never be anyone to report such abusive behavior, and along with Rule 8.03 (Reporting Professional Misconduct), there will be other Rules that will become paper tigers.

In the criminal law setting, a prosecutor can repeat the politically popular slogan of “tough on crime” or “an unblemished prosecution record” to justify within his department a no holds barred approach to all cases. It is possible that defense counsel suspects something is amiss but the only ones with the knowledge of the abuse of process would be those in the district or county attorney’s office with no incentive to report the conduct. The office will be shielded from the Rules including specifically of the Rules applicable to prosecutors, Rule 3.09 (Special Responsibility of Prosecutors).

A standing requirement would keep those in the best position to report the abuse or violations from filing a grievance. That is not the intent of the Rules and eliminates both protection of the public and the respect of the profession. The legal profession is complex, and the potential for harm to the public outweighs potential for harm to attorneys responding within the grievance system. Anyone who sees, or believes they see attorney misconduct should not be denied the opportunity to submit the matter to the investigatory body for review.

LEGITIMATE CONCERN

The Committee acknowledges that there are legitimate concerns about the potential for some to abuse the grievance process to embarrass or damage someone's reputation. The Preamble to the

⁴⁷ *Id.* § 1.14.

⁴⁸ *Id.* § 7.01(g). *See also* Tex. Misc. Docket 22-9011. <https://www.txcourts.gov/media/1453538/229011.pdf>.

Rules also acknowledges this, stating that "the purpose of these rules can be abused when they are invoked by opposing parties as procedural weapons."⁴⁹ If a grievance were filed against someone and made public by the complainant it could have negative repercussions for that lawyer, even if the Complaint had no merit and was quickly dismissed. This is a concern particularly in the political context with groups and individuals on the left and the right who disagree on policy issues or are opponents in a campaign, filing complaints to generate negative headlines.

While it does not appear that this kind of abuse is widespread, the Committee was provided anecdotal evidence that it does occur. In at least two examples it appears groups were formed for the express purpose of politicizing the grievance process. In New York, a group of law professors created a web site to publish complaints and bring public pressure on certain prosecutors.⁵⁰ A group called the 65 Project formed to file complaints against any lawyer associated with former President Donald Trump's campaign team.⁵¹ This group also filed a complaint against Texas Senator Ted Cruz claiming statements he made about potential voter fraud in the 2020 election violated ethics rules.⁵² On a more local scale, the Committee heard complaints of the grievance process being used as a political weapon in small Texas towns.

These efforts did not result in law license suspensions but did generate embarrassing headlines, and particularly in the New York case, led to questions about the legitimacy of the grievance process.⁵³ The Committee takes this seriously and will continue to monitor whether there is an increase in similar kinds of complaints in Texas, and, if necessary, recommend further action to protect the integrity of the system.

GOC RECOMMENDATION

CDC Should Track the Relationship Between Complainant and Respondent

The Committee recommends tracking the relationship of the complainant to the respondent, including but not necessarily limited to whether the complainant is the client, non-client payor, opposing party, opposing counsel, presiding judge, family member or guardian of the client, eyewitness, or other member of the public. This will permit the CDC to spot trends if they arise.

The Existing Rules Are Sufficient

For attorneys, bringing a frivolous proceeding is a violation of the rules themselves.⁵⁴ While the comments do not specifically address grievances, they state that one way in which a filing may be considered frivolous is "if it is made primarily for the purpose of harassing or maliciously injuring

⁴⁹ TDRPC Preamble par. 15.

⁵⁰ Jonah Bromwich, *They Publicized Prosecutors' Misconduct. The Blowback Was Swift*, N.Y. Times, Nov. 10, 2021. <https://www.nytimes.com/2021/11/10/nyregion/queens-prosecutors-misconduct.html>.

⁵¹ Marklay Lachlan and Jonathan Swan, *Scoop: High-powered Group Targets Trump Lawyers' Livelihoods*, AXIOS, Mar. 7, 2022. <https://www.axios.com/2022/03/07/trump-election-lawyers-disbar>.

⁵² Brooke Park, *U.S. Sen. Ted Cruz is the Target of a Bar Association Complaint Over His Role in Undermining the 2020 Election Results*, The Tex. Tribune, May 18, 2022. <https://www.texastribune.org/2022/05/18/ted-cruz-donald-trump-complaint-texas-bar/>.

⁵³ Bromwich, *supra*.

⁵⁴ Tex. Rules Disciplinary P. R. 3.01.

a person."⁵⁵ Rule 3.10 brings all other applicable rules to bear when an attorney is appearing in non-adjudicative proceedings.⁵⁶ Rule 3.02 prohibits a lawyer from unreasonably increasing the costs or burdens of a matter.⁵⁷ The comments to Rule 3.03 on Candor Toward the Tribunal note that "an assertion purporting to be on the lawyer's own knowledge [...] may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry."⁵⁸ And the comments to Rule 3.07 note that while ordinarily publicizing the general nature of a claim would not violate the rule, that special rules of confidentiality may validly govern certain proceedings.⁵⁹ Utilizing the rules already in place, or providing additional commentary to the rules could address any abuse trend that may develop.

Pursuing attorneys for abusing the grievance system would not restrict access to nor limit transparency in the grievance process. As the rules and comments state, lawyers are subject to discipline only for habitual abuses of procedural or evidentiary rules.⁶⁰ While attorneys are only required to report "violations that must be revealed [...] in order to avoid violating" the rules themselves, attorneys are not limited from reporting suspected violations, as "[f]requently, the existence of a violation cannot be established without certainty until a disciplinary investigation has been undertaken."⁶¹

CONCLUSION

The Committee believes the Texas grievance process is designed with the ability to combat any attempted abuse of the system. The Committee is interested in more fully developed data, and will continue to monitor, consider further solutions, and make applicable recommendations if necessary.

The Grievance Oversight Committee thanks the Court for the opportunity to serve and the privilege to advise the court on issues affecting the attorney-client disciplinary process.

⁵⁵ *Id.* R. 3.01 cmt. 2.

⁵⁶ *Id.* R. 3.10.

⁵⁷ *Id.* R. 3.02.

⁵⁸ *Id.* R. 3.03, cmt. 2.

⁵⁹ *Id.* R. 3.07, cmt. 5.

⁶⁰ *Id.* R. 3.04 and cmt. 3.

⁶¹ *Id.* R. 3.04 cmt. 3, and Rule 8.03 cmts. 1, 2; but note the comments to R. 3.03 regarding attorney assertions.