



# ANNUAL REPORT

September 1, 2020 – August 31, 2021

**Office of the Ombudsman for the  
Attorney Discipline System of the State Bar of Texas**

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Presented to the Supreme Court of Texas on October 12, 2021

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## CREATION OF THE OFFICE, STATUTORY MANDATES, AND PUBLIC ACCESS

The Office of the Ombudsman for the Attorney Discipline System of the State Bar of Texas (Ombudsman) was created during the Sunset Review process for the 85<sup>th</sup> Legislature.<sup>1</sup> As the Texas Sunset Advisory Commission explained, the Ombudsman position was recommended along with other changes “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.”<sup>2</sup> This was echoed by the Chief Disciplinary Counsel, who noted that “[a]lthough the Office of the Chief Disciplinary Counsel [was already] subject to oversight and accountability, the [Texas] Legislature established the position of ombudsman for the attorney discipline system as an additional measure.”<sup>3</sup> The Texas Legislature codified the recommendation during the 85th Legislative Session, it went into effect on June 1, 2018 with the Texas Supreme Court’s adoption of amendments, and the current Ombudsman began the job on July 14, 2018.<sup>4</sup> The statute makes it clear that the Ombudsman is:

- 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.<sup>5</sup>
- 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 by the State Bar of Texas.<sup>6</sup> 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.<sup>7</sup>
- 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.<sup>8</sup> The 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 she receives, including documents from various State Bar of Texas departments, to any person other than the Chief Disciplinary Counsel.<sup>9</sup>

While the Texas Legislature imbued the Ombudsman with many abilities and protections to help her accomplish the above, it also made it clear in the statute that there are certain actions that the Ombudsman cannot take with regard to the attorney discipline system.

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<sup>1</sup> See Staff Report with Final Results, Tex. Sunset Advisory Comm’n (Jun. 2017). A copy of the Staff Report with Final Results, redacted for relevancy, is included as Exhibit 1 to the Appendix.

<sup>2</sup> *Id.* at A7.

<sup>3</sup> Linda A. Acevedo, *Texas Attorney Discipline System Update*, 81 Tex. B. J. 444, 445 (2018).

<sup>4</sup> *See id.*

<sup>5</sup> Tex. Gov’t Code § 81.0883(a). A copy of Tex. Gov’t Code §§ 81.0881 – 81.0885 is included as Exhibit 2 to the Appendix.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at § 81.0883(a)(6).

<sup>8</sup> *Id.* at § 81.0882(b).

<sup>9</sup> *Id.* at § 81.0885(a).

Namely, the Ombudsman is prohibited from:

- (1) “draft[ing] a complaint for a member of the public;
- (2) act[ing] as an advocate for a member of the public;
- (3) revers[ing] or modify[ing] a finding or judgment in any disciplinary proceeding; or
- (4) intervene[ing] in any disciplinary matter.”<sup>10</sup>

Despite these statutory restrictions, the Texas Sunset Advisory Commission, the Texas Legislature, and those involved in the attorney discipline process trusted the Ombudsman to “provide an additional means to receive information and support regarding the attorney discipline system and an independent avenue to verify compliance with the grievance process.”<sup>11</sup> Ultimately, the Ombudsman was created to “foster further confidence in the attorney discipline system.”<sup>12</sup>

Based on the statutory mandates explained above and the overarching goals of increasing transparency, independence, and access within the attorney disciplinary system, the Ombudsman built a program focused on public customer service. Other than the enabling statute, the main source of public information about the Ombudsman’s office is its website, which explains the role of the Ombudsman, details what an Ombudsman can and cannot do for the public, lists contact methods, and gives useful links to resources within the State Bar of Texas and other disciplinary entities.<sup>13</sup> Since the Ombudsman is an employee of the Supreme Court of Texas, the website was placed under the Bar & Education section of the Texas Judicial Branch’s webpage. However, in an effort to make it easier to find this crucial information, the Ombudsman also had links to the webpage placed at numerous places on the State Bar of Texas’ and Supreme Court of Texas’ websites, including the Supreme Court of Texas’ FAQs page and the State Bar of Texas’ Contact Us, Grievance and Ethics Information, and File a Grievance pages.

## **NOTABLE UPDATES FROM THE 2020-2021 REPORTING PERIOD**

The most notable update from this past year was the continuance of COVID-19 and its impact on the operations of the Ombudsman’s office as well as the attorney discipline system as a whole. In an effort to protect the health of the public and its employees, the State Bar of Texas mandated most employees, including the Ombudsman, telecommute beginning on March 16, 2020. This mandate continued throughout this reporting period. While this of course necessitated some adaptation, including changing how the office receives and responds to phone inquiries and taking occasional trips to the physical office to check for mail, the Ombudsman’s office was able to stay fully operational from the date the work-from-home mandate started through the date of this report. As the COVID-19 protocols remain, it is the goal of the Ombudsman’s office to continue to provide services to the public in a thorough and efficient manner from a home office environment.

Another event that greatly impacted the Ombudsman’s office along with many others in Texas was the winter storm that occurred in February 2021. Due to the widespread power outages and loss of comfortable living and working conditions, the State Bar of Texas closed its offices the entire week of February 15,

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<sup>10</sup> *Id.* at § 81.0883(b).

<sup>11</sup> Acevedo, *supra* note 3, at 445.

<sup>12</sup> *Id.*

<sup>13</sup> A copy of the Ombudsman’s current website is included as Exhibit 3 to the Appendix.

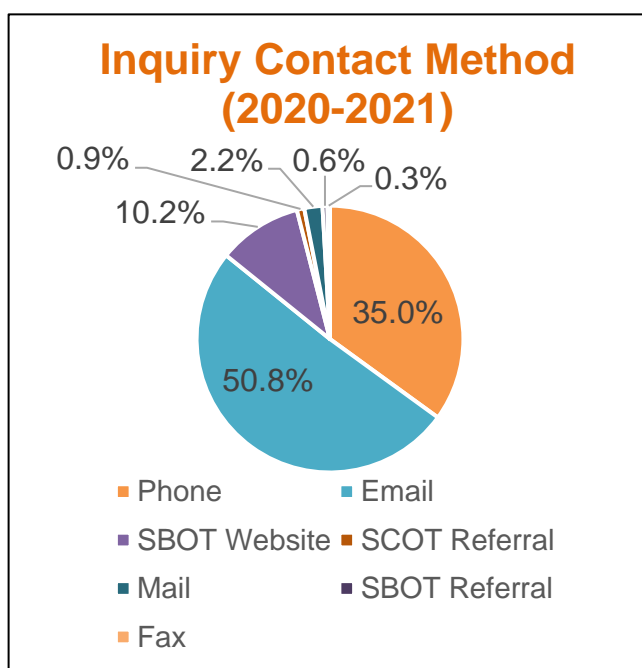
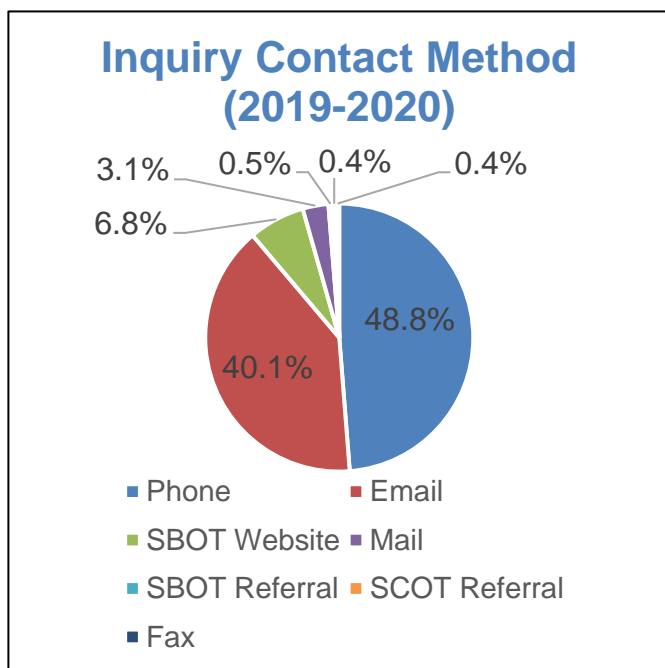
2021. This closure, while necessary, did extend the office’s response time for many inquiries that week but things were caught up and back to normal by the end of the month.

Lastly, the Ombudsman again met with various other departments within the State Bar of Texas as well as outside agencies to explain the purpose and duties of the Ombudsman’s office and determine how the Ombudsman can work with these other groups to better serve its mission. Such groups included the Commission for Lawyer Discipline; the Grievance Oversight Committee; the Discipline and Client Attorney Assistance Program Committee; and the State Bar of Texas’ Task Force on Public Protection, Grievance Review, and the Client Security Fund. As detailed in the statute that created the office, the Ombudsman also virtually attended a State Bar of Texas Board of Directors meeting on January 22, 2021 where she presented her report for the 2019-2020 year and took questions and comments from those in attendance.

## PUBLIC INQUIRIES – CONTENT AND RESPONSES

### Inquiry Content

The Ombudsman received 785 inquiries during the period from September 1, 2020 to August 31, 2021. This is an increase of approximately 36% from the 578 inquiries received during the last reporting period and an almost 70% increase from the 464 inquiries received during the 2018-2019 reporting period. This uptick in overall inquiries continued the trend of precipitous growth for the office and represented the largest increase in a reporting period yet, with over 10% more growth than occurred during the 2019-2020 reporting period. Although not confirmable, this escalation of inquiries could be a result of the office’s heightened visibility in the community or the general atmosphere created by COVID-19. Regardless, it meant that the one-person Ombudsman department had to increase efficiency to accommodate the increase in traffic.



As detailed in the charts above, the methods used to contact the Ombudsman included phone, email, the State Bar of Texas website, referrals from the Supreme Court of Texas, referrals from the State Bar of Texas, mail, and facsimile. This reporting period saw a fairly drastic change in the contact method

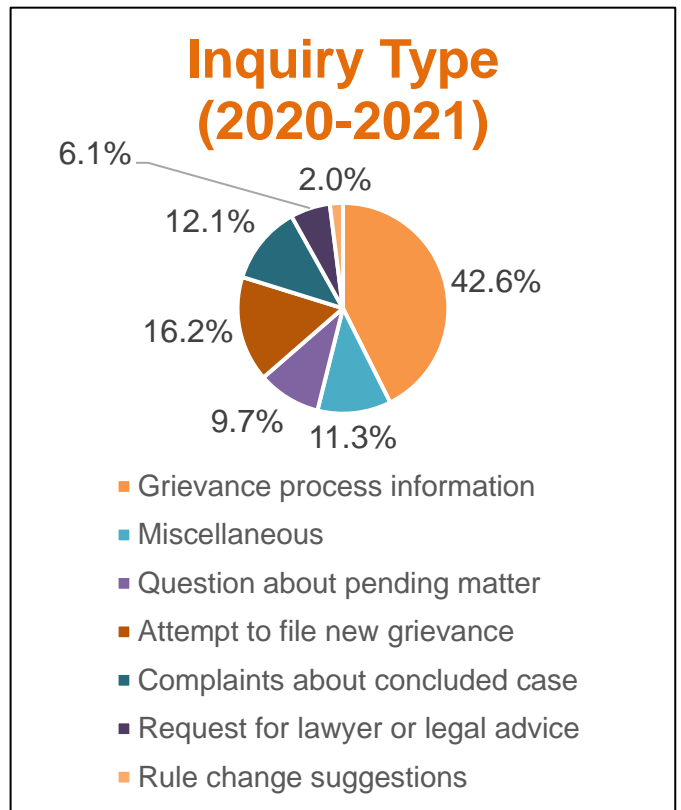
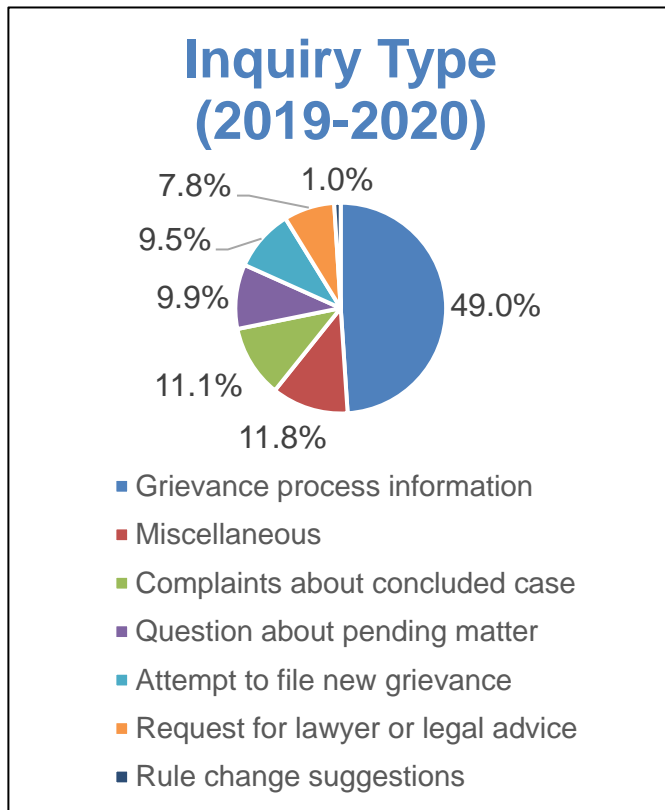
demographics, with email becoming the most frequent way that inquirers got in touch with the office at 50.8%. Similarly, the number of people who contacted the Ombudsman via the State Bar of Texas' website increased from 6.8% in the 2019-2020 reporting period to 10.2% in the current reporting period. These increases were accompanied by a similar decrease in the percentage of people who contacted the Ombudsman by phone, which dropped by about 13%. This rise in electronic contact methods and reduction in the number of phone inquiries is a continuation of the trend seen in between the office's first and second report. However, the severity of the change has certainly intensified, with the drop in phone contacts as a percentage of overall contact methods more than doubling from last year to this year.

Although merely anecdotal, some of this drop can almost certainly be attributed to the COVID-19 epidemic and the operations changes that necessitated. As mentioned above, the State Bar of Texas mandated its employees work from home from March 16, 2020 through the time of this report. Due to this, the Ombudsman was no longer able to answer direct phone calls from the public to either of its office numbers. Rather, the Ombudsman receives an email notification after a message is left on the office voicemail, checks the message remotely, and then returns the call from her personal cell phone. In an effort to safeguard her personal cell phone number from the public, any return call is from a blocked number or a number with no caller ID. The outgoing voicemail message that greets inquirers informs them of this process and suggests that they can also reach the Ombudsman via email, which could potentially result in a quicker response. As such, there were many individuals who ended up sending emails after leaving a voicemail and the Ombudsman suspects that others sent emails without leaving a voicemail after hearing that suggestion. This is one of the few areas where COVID-19's impact can be seen in its operations. Even though the percentage of phone inquiries decreased, a large portion of the Ombudsman's typical day is still spent counseling people on calls, which could last anywhere from 5 minutes to well over an hour.

Although they continue to constitute a small number of inquiries at a combined 1.5% of total contacts, the referrals from the State Bar of Texas and the Supreme Court of Texas have proven to be vital outlets for the distribution of work among those in the attorney discipline system. Additionally, this puts inquirers in touch with an independent office specifically designed to handle their complaints or questions, which can lead to continuity and more inquirer satisfaction. The Ombudsman has continued to receive cases from other members of the Texas government through this process, including additional inquiries from state legislators' offices. Although other departments at the State Bar of Texas are often necessarily involved as well, the inclusion of an Ombudsman in the matter added an extra layer of independent scrutiny in frequently complex cases.

As is shown in the Inquiry Type charts below, most people contacted the Ombudsman to obtain more information about the attorney discipline system. Typically, a person in this category is having an issue or disagreement with an attorney and they get in touch with the Ombudsman to hear what their options are. However, there were also several instances of researchers or academics that contacted the office to get a more general sense of the position and how it fits into the overall grievance process that are included in this 43% of inquiries. While this continued to be the reason most people contacted the office, there was a 6% drop in this category from the previous reporting period. On the other hand, the number of people contacting the Ombudsman to attempt to report a new grievance correspondingly increased by about 6%. Because these categories are fairly similar, it ultimately did not noticeably affect office operations. However, it could indicate that the public does not understand the Ombudsman's role in the grievance process and believes or hopes that the office can process and investigate complaints. As such, it might be worth keeping an eye on

this statistic to determine if updates can be made to the Ombudsman’s website to further clarify what the office can and cannot do.



The inquiries labeled miscellaneous constitute a wide variety of issues, all of which are outside the scope of the Ombudsman’s expertise or purview. For example, some are people wanting an Ombudsman’s help with a complaint against a judge or another government official, while many are individuals wanting more information on a specific attorney’s membership status with the State Bar of Texas. While the overall percentage of miscellaneous inquiries remained steady at about 12%, I did notice that many people got in touch with the office to express their opinion about whether or not a particular public figure should be sanctioned. As is the case with other contacts that are given the miscellaneous label, these attempts to influence the outcome of a potential disciplinary matter represent a fundamental misunderstanding of how the Ombudsman’s office operates. Ideally the office will see fewer of these types of inquiries in the future.

Complaints about concluded cases have increased slightly from the last report, from 11.1% to 12.1%, which could represent an increased dissatisfaction with the operation of the attorney discipline system or an increased understanding of the Ombudsman’s role in this area. Whatever the cause, the increase means even more of the Ombudsman’s overall resources must be dedicated to handling these files, which typically require the most time to review and respond to. In this category, individuals have already gone through the grievance process, and in most cases their grievance has been dismissed and their opportunity to appeal has run out. To fully discharge the Ombudsman’s duty in these matters, the office must request and review the Chief Disciplinary Counsel’s files on the particular grievance to ensure that proper procedures were followed. This often also mandates taking suggestions and complaints about the attorney discipline system from the inquirer. Therefore, while the number of inquirers who contact the Ombudsman with the main purpose of suggesting changes to the disciplinary system is a miniscule 2%, the overall amount of recommendations received from the public is significantly greater.

Beyond the statistics collected and provided above, the Ombudsman also compiled information about: (1) the types of cases the inquirers were contacting the Ombudsman about; (2) the relationship of the respondent-attorney to the inquirer; (3) and the alleged attorney behavior that is the subject of the inquiry. While it was impossible to get this information for every inquiry, the data can provide some insight into the types of cases that are likely to result in grievances. While family law and criminal law cases remained the types of cases most cited by inquirers (at 35% and 21%, respectively), the frequency of both decreased during this reporting period. At the same time, the percentage of inquirers who brought up real estate (9%), personal injury (9%), and probate cases (8%) all increased. Similar to the last reporting period, most inquirers who identified the target of their complaint were having issues with their own attorney, but there was an increase in the percentage of inquirers contacting the office about problems with opposing counsel or an attorney that they do not have a relationship with. This reporting period inquirers continued to complain about the non-responsiveness of their attorney, with 37% of those bringing up this fact. As this problem endures, programs such as the Client Attorney Assistance Program and the Grievance Referral Program, which help resolve communication issues between attorneys and their clients, become increasingly important. This reporting period also saw an increase in the number of people complaining about unprofessional behavior unrelated to the law and those alleging issues with conflicts of interest but saw a decrease in the number of inquirers mentioning malpractice.

Finally, as was also true last year, most inquirers were members of the public or current or potential complainants. After noticing this during previous reporting periods, the Ombudsman took particular note of when an inquirer identified themselves as an attorney. While this number continued to be small, more attorneys reached out to the office this year than in previous reporting periods, with 6.6% of inquirers indicating their attorney status over 4.5% from the previous year. Hopefully the office's interaction with other groups that include attorneys along with the continued presentation of these annual reports at the State Bar of Texas' board of directors meeting has increased its visibility within the attorney community and encouraged this increase in contacts. These inquiries occurred for a wide variety of reasons, including attorneys wanting to know whether or not particular actions constitute misconduct, people asking for a certified copy of their disciplinary history, and even a couple of instances of attorneys acting as a complainant in a pending or completed grievance. As is the case with non-attorney members of the public, most attorneys that contacted the office did not do so to provide suggestions for improvement to the disciplinary system but the office did receive a few complaints and recommendations. In the future, the Ombudsman hopes that more attorneys will contact the office to offer their insight into the operation of the attorney discipline system, particularly since they hold a unique position in the grievance ecosystem.

### Response Content

Although the unique aspects of each inquiry necessitate some customization, the Ombudsman has developed a standard response to inquirers who request general information about the attorney discipline system. In particular, the response includes information about the Client Attorney Assistance Program and how to file a grievance through the Office of the Chief Disciplinary Counsel. With both programs, the letter or email provides background details, contact information, brochures, and forms needed to enroll in the program or file a grievance.<sup>14</sup>

For some responses it was also necessary to include information on other programs or agencies. For example, in a case where someone wishes to file a complaint against a judge, the response would include information on how to contact the State Commission on Judicial Conduct. On the other hand, in an instance

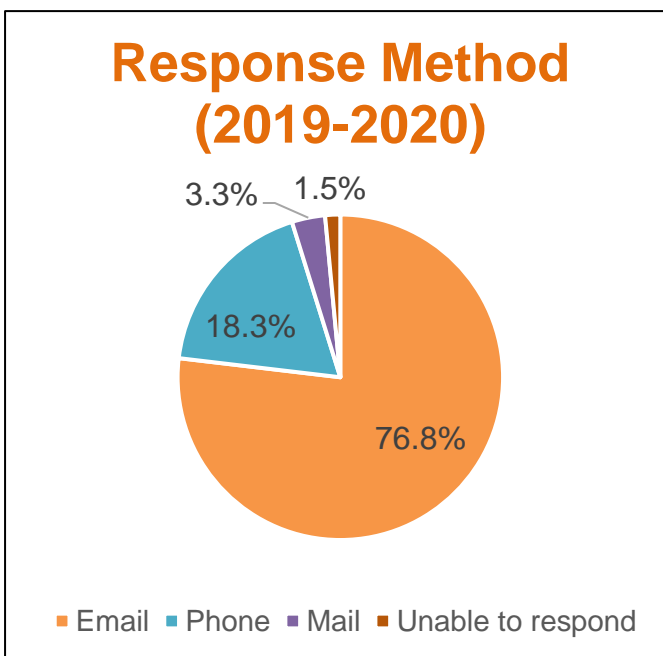
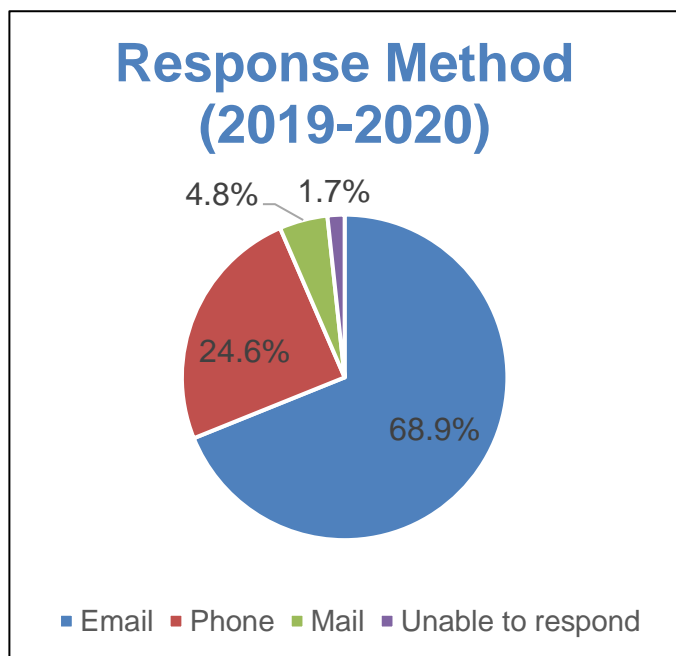
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<sup>14</sup> A redacted example of a typical response to such an inquiry is included as Exhibit 4 to the Appendix.



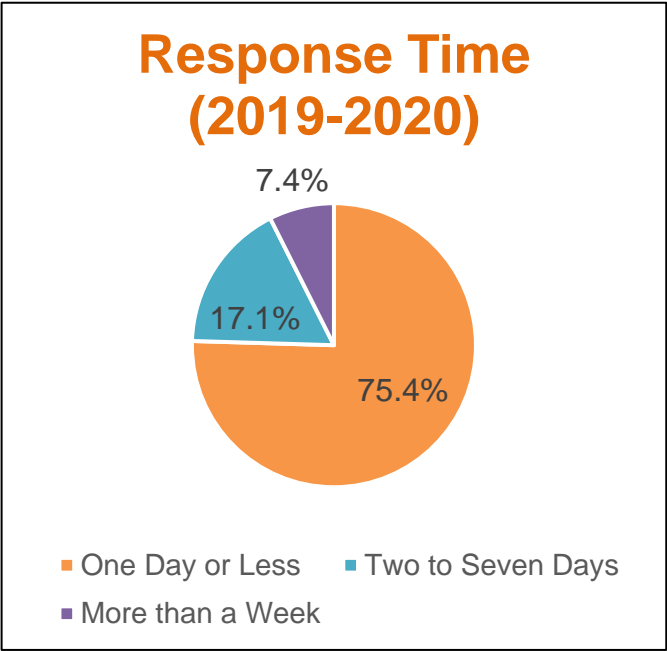
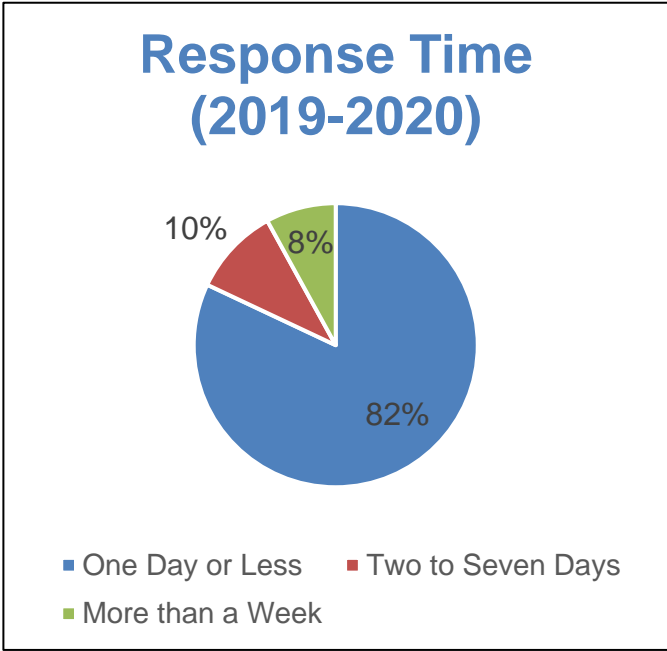
where a person is having trouble with his or her attorney and would like assistance in finding a new one, the response directs them to resources like the Lawyer Referral and Information Service, which helps individuals find a lawyer or other resource that best matches his or her legal needs and financial means. Similarly, if an inquirer is solely concerned with the amount of fees charged by his or her attorney, the response will include a link to information about local bar associations' fee dispute committees. In the event the Ombudsman receives an inquiry from a Supreme Court of Texas or State Bar of Texas referral, the first step is always to send an acknowledgement letter to the inquirer. In that letter, the Ombudsman explains how she received the communication, why it was forwarded to them, and the role she plays in the disciplinary system.<sup>15</sup> This standard response lets the inquirer know that his or her communication was received, provides context and contact information for the Ombudsman, and in the event follow-up is required, assures them that someone is looking into his or her issues.

While inquirers may contact the Ombudsman through a wide variety of methods, the responses have all been by email, phone, and mail, as seen in the chart below. In an effort to provide inquirers with a document that they can consider and reference at any time, the Ombudsman will often send an email that includes relevant information even after explaining all necessary details about applicable resources and programs over the phone. Although this often leads to additional work for the Ombudsman, it probably reduces the likelihood that an individual will have to contact the Ombudsman with additional questions and ultimately increases inquirer satisfaction. As such, even though inquirers often prefer discussing matters with the Ombudsman over the phone, the most common response method continued to be email at 76.8%. Similarly, some of the responses categorized as mail were initially discussed over the phone. The response trend follows what was seen in contact methods (discussed above) with email responses seeing an 8% increase and phone and mail responses seeing decreases of about 6% and 2%, respectively. As was true with the last reporting period, this year the Ombudsman also saw a few instances where they were unable to respond to an inquiry. Per the chart above, this only constituted 1.5% of all inquiry responses and often occurred because an individual did not leave any return contact information in a voicemail or piece of mail.



<sup>15</sup> A redacted example of an acknowledgement letter is included as Exhibit 5 to the Appendix.

The Ombudsman makes every effort to respond to each inquiry as fully and efficiently as possible. During the period discussed in this report, the average time to close inquiries, whether a simple one-off question or request for review of a complex grievance file, was 2 days. While this average does represent an increase from the 1.65-day average from the last reporting period, it is still a significant decrease from the 3-day average reported in 2018-2019. While the office continually strives to provide quicker responses to inquirers, the fact that the average response time increased by less than half a day in a year that included a rapid increase in the number of overall inquiries, continued COVID-19 restrictions, and an extended office closure due to inclement weather is encouraging. As further detailed in the chart below, 75.4% of all inquiries were responded to and closed within a day and 92.5% of all inquiries were handled within a week. It is worth noting that the times referenced in this chart include weekends and holidays, which necessarily increase the response time.



**COMMON COMPLAINTS FROM THE PUBLIC**

Transparency-Related Complaints

As was the case with the last reporting period, complaints concerning the lack of transparency of the attorney discipline process occurred with more frequency than any other category of criticism, and many of the objections raised in previous annual reports persisted. For example, inquirers continued to voice frustration and anger over what they deemed to be a lack of a satisfactory explanation of why a particular grievance was dismissed. While most of these complaints were targeted at classification stage dismissal, many inquirers were also upset about the dearth of information provided by the Board of Disciplinary Appeals when affirming a dismissal, a finding of no just cause by the Summary Disposition Panel, or a finding by a District Grievance Committee of a lack of sufficient evidence after an investigatory hearing.<sup>16</sup> Inquirers emphasized that the lack of specificity in the letters implied that the body issuing them did not

<sup>16</sup> A dismissal in the attorney discipline context means one of two things. If it was dismissed as an inquiry at the classification stage, it indicates “that the grievance alleges conduct that, even if true, does not constitute professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct.” Tex. Gov’t Code, *supra* note 5 at § 81.073(a)(2). If it was dismissed after it was classified as a complaint, it means that the body making the determination has found that “there is no just cause ....” See *id.* at § 81.075(b)(1).

carefully consider their grievance. In particular, many pointed out that the dismissal notices did not cite to specific facts, evidence, or rules as reasons for dismissal.<sup>17</sup>

In addition to the general complaints that the entire disciplinary process is vague, confusing, and secretive, many inquirers' ire was focused on the information provided by the Chief Disciplinary Counsel's office about the hearing process, including Summary Disposition Panel hearings and investigatory hearings. In particular, the Ombudsman heard from both complainants and respondents that they would like to be notified as soon as the Chief Disciplinary Counsel's office has decided to place a matter on the Summary Disposition Panel docket, rather than being told when the hearing has already been scheduled. Additionally, inquirers complained that the Chief Disciplinary Counsel's office does not provide much information about the hearings, such as exactly who will be in attendance, what will be discussed, and the potential outcomes of such a hearing. Relatedly, inquirers commented that it was often confusing to determine the deadline for submitting additional information for the panel's hearing packet. I received several complaints from individuals that they were not able to get all their evidence included for consideration, which could have affected the outcome of their grievance.

Because of the growing but still infrequent instance of inquiries by attorneys, it is worth noting that the Ombudsman did have lengthy discussions concerning the grievance process with a couple of attorneys who went through the process as complainants in the past year. This of course puts them in the somewhat unique position of an inquirer who can consider the process from both the viewpoint of complainant and respondent. Their experience and related complaints mirrored the calls for increased transparency by non-attorney inquirers, particularly in regard to providing a full explanation of dismissal and keeping the complainant informed of the status of the process.

### [Complaints Related to Bias](#)

As was true in previous reporting periods, the Ombudsman received many complaints alleging that the discipline system and the State Bar of Texas as a whole are biased in favor of attorneys. Although these types of complaints are likely inevitable in any regulatory arena, there are a couple specifics worth noting here. First, allegations of racial discrimination or disparity continued with some complainants noting that the racial make-up of the panels that rule on grievances do not reflect the diversity of complainants, respondents, or the state overall. Additionally, inquirers continued to note that in their view the entire process is skewed to give respondents the advantage against complainants' allegations. For example, many claimed that respondents are given a lot of leeway and extensions to respond to complaints and are often not punished for failing to adhere to the 30-day deadline to provide such a response.<sup>18</sup> Similarly, complainants alleged that the hearing process is partial to the respondent, allowing them to cross-examine witnesses and give opening and/or closing statements. In the complainant's experience, they do not have much if any power to tell their story and must rely on the representative from the Chief Disciplinary Counsel's office to ask them questions that allow such expression.

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<sup>17</sup> Redacted examples of a typical dismissal letter sent to a complainant by the Chief Disciplinary Counsel's office when their grievance is classified as an inquiry, a typical letter affirming dismissal sent by the Board of Disciplinary Appeals, a typical letter sent to a complainant after a Summary Disposition Panel finds there is no just cause, and a typical letter sent to a complainant after an investigatory hearing conducted by a District Grievance Committee finds that there is not enough evidence to continue are included as Exhibits 6, 7, 8, and 9, respectively, to the Appendix

<sup>18</sup> While I have seen instances of response times being extended, which is allowed, I have also noticed instances where a complainant is permitted to provide a rebuttal after the 10-day window given by the Chief Disciplinary Counsel's office. Additionally, I came across at least one instance where a reconsideration of tolled deadlines benefitted a complainant. On the whole, it seems like the Chief Disciplinary Counsel's office is flexible to both complainants and respondents when allowed but it is something to continue to track going forward.

## Other Complaints

Beyond complaints pertaining to transparency and bias, the Ombudsman's office also received recommendations concerning various other disciplinary policies and procedures.

As mentioned in previous reports, complainants continue to voice concern over the way the Chief Disciplinary Counsel's office conducts investigations into grievances that are not dismissed upon classification. Common refrains are that the investigators never reach out to the complainant, do not contact any listed witnesses identified in the grievance, and never subpoena any information outside of the documents provided by complainants and respondents. Similarly, inquirers persist in their objections to how infrequently they are contacted by investigators and their ability to get in touch with them for updates on the process.

This reporting period also saw an increase in the number of complaints related to access and communication. In particular, the office heard from a number of disabled and elderly individuals over the past year who voiced concerns about their ability to access the grievance process. They noted that some complainants might have an issue with using the options currently available (online submission, mail and fax) and asked to be able to submit grievances orally or for the State Bar of Texas to provide a neutral party to assist individuals with disabilities in filling out and submitting the grievance form.<sup>19</sup> Similarly, some individuals complained that they had difficulties with the Chief Disciplinary Counsel's office's contact methods. Specifically, they noted that they either did not receive the notification sent by the Chief Disciplinary Counsel's office or that the Chief Disciplinary Counsel's office did not send it to them by their preferred method.

Beyond the transparency-related comments mentioned above, the Ombudsman also received comments from several attorneys concerning the posting of previous disciplinary history for lawyers. During the last sunset review process, the Texas Sunset Advisory Commission recommended that the entire disciplinary history of attorneys be posted online rather than limiting publicly available disciplinary history to the last 10 years.<sup>20</sup> This recommendation was later enacted by the Texas Legislature, and the State Bar of Texas is now required to provide all disciplinary history on an attorney's online profile.<sup>21</sup> Because the change was statutory, the State Bar of Texas cannot alter it through informal actions. However, since it was a fairly common refrain heard by attorneys contacting the office, it is worth mentioning here.

## **RECOMMENDATIONS FOR IMPROVEMENT**

The Chief Disciplinary Counsel and State Bar of Texas process and investigate thousands of grievances and have used their collective experience to create an efficient and effective system to do so. However, as is true with any process, it can be improved. Below are recommendations for improvements to the system based on the comments and criticisms heard by the Ombudsman over the period covered by this report.<sup>22</sup>

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<sup>19</sup> This concern is one that has been noted by the State Bar of Texas. In fact, there was a concerted effort this year to brainstorm resources that the State Bar of Texas could direct disabled and elderly individuals toward when they expressed a difficulty in submitting a grievance. As of this date, individuals are encouraged to reach out to a friend or family member to help fill out the forms. Additionally, the State Bar of Texas notes that there are various state-funded resources, including 211, Texas Health and Human Services, and the area agency on aging.

<sup>20</sup> See Staff Report with Final Results, *supra* note 1, at 31, 35-36.

<sup>21</sup> Tex. Gov't Code, *supra* note 5 at § 81.115.

<sup>22</sup> Note that this report makes different recommendations from those offered in the 2018-2019 and 2019-2020 reports, which were (1) enable communication and filing of grievances through email; (2) send acknowledgement communication to confirm

### Recommendation 1: Provide Complainants and Respondents with a Way to Indicate Their Preferred Contact Method

As explained above, the office continued to receive complaints that individuals did not receive notices concerning their grievance or asked to receive notices via a certain method and the Chief Disciplinary Counsel's office sent it another way. In an effort to ensure that as many people involved in the process as possible are well informed, the Ombudsman recommends that grievance forms include a question that asks the best contact method for the complainant. Similarly, the office would suggest posing a similar question to respondents when they are first contacted. If this proves too logistically difficult to implement, the Ombudsman would ask that the Chief Disciplinary Counsel's office strive to honor contact method requests when they are made by either a complainant or respondent.

### Recommendation 2: Provide Complainants and Respondents with More Information About Upcoming Hearings

This recommendation is meant to address the perception from numerous inquirers that they do not understand the hearing process. The Ombudsman suggests that the Chief Disciplinary Counsel's office should include more information about the hearing process in the notices sent to both parties to the matter. Such information could include the purpose of the hearing, who is allowed to attend, who is allowed to participate and in what way, who makes the decision as to the outcome of the hearing, and when someone can expect to get that decision. In particular, if the individual receiving the notice is going to be allowed to attend the hearing, an extended explanation of what they specifically can and cannot do would be helpful. Additionally, based on the complaint about not understanding deadlines for submitting information for inclusion in the hearing packet, it would be helpful for the Chief Disciplinary Counsel's office to give complainants and respondents a distinct deadline for providing additional documents or evidence for the hearing. The Chief Disciplinary Counsel's office currently does include some information about the hearings in communications sent to parties but comments from inquirers indicate that participants are still frequently confused about these proceedings. Hopefully, this will temper expectations for both complainants and respondents and lead to less confusion during the process and complaints after the fact.

## **CONCLUSION**

Although the previous year's reporting period required more from the Ombudsman as far as adjusting to working from home, the 2020-2021 year had its share of challenges such as continuing to work in a pandemic, dealing with a statewide weather emergency, and handling an increased workload. While the Ombudsman found the attorney discipline system and programs that support it to be professionally and skillfully run, improvements can always be made to better serve the public and further its mission of overseeing the legal profession in Texas. The Ombudsman anticipates that the operation of its office can similarly make improvements in the years to come and strives to operate more efficiently and more effectively to assist the public and demystify the attorney discipline system.

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receipt of grievances; (3) provide regular status updates to complainants during the investigation phase; (4) provide a more detailed explanation to complainants upon dismissal of grievances; (5) continue to allow communication via email; and (6) provide more information about the process in the grievance form. That does not mean that those recommendations are no longer valid but rather is simply reflective of the Ombudsman's office's desire to offer new proposals or different insights into the grievance process.