



ANNUAL REPORT

September 1, 2021 – August 31, 2022

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

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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 85th Legislature.¹ 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.”² 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.”³ 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 started on July 14, 2018.⁴ 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.⁵
- 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.⁶ 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.⁷
- 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.⁸ 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.⁹

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.

¹ 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.

² *Id.* at A7.

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

⁴ *See id.*

⁵ 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.

⁶ *Id.*

⁷ *Id.* at § 81.0883(a)(6).

⁸ *Id.* at § 81.0882(b).

⁹ *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.”¹⁰

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.”¹¹ Ultimately, the Ombudsman was created to “foster further confidence in the attorney discipline system.”¹²

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.¹³ 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 2021-2022 REPORTING PERIOD

Compared to the significant changes that occurred during the past two reporting periods, including the onset of a pandemic and a major weather event, this year’s updates are less extreme but are still worth noting. Due to the introduction of vaccines and changes in the Center for Disease Control’s guidelines, the Ombudsman and the rest of the State Bar of Texas transitioned to a hybrid work plan. In addition to this, the State Bar of Texas implemented a new phone system which utilizes Microsoft Teams. This program enables all phone calls to be received on and made from the users’ computers, guaranteeing that the caller has the same experience whether the Ombudsman is speaking to them from the office or at a remote location. This tool and others have ensured that the Ombudsman is able to maintain the same level of professionalism and efficiency while working from home versus in the office.

Additionally, 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 and the State Bar of California. As detailed in the statute that created the office, the Ombudsman also virtually attended a State Bar of Texas Board of Directors meeting on

¹⁰ *Id.* at § 81.0883(b).

¹¹ Acevedo, *supra* note 3, at 445.

¹² *Id.*

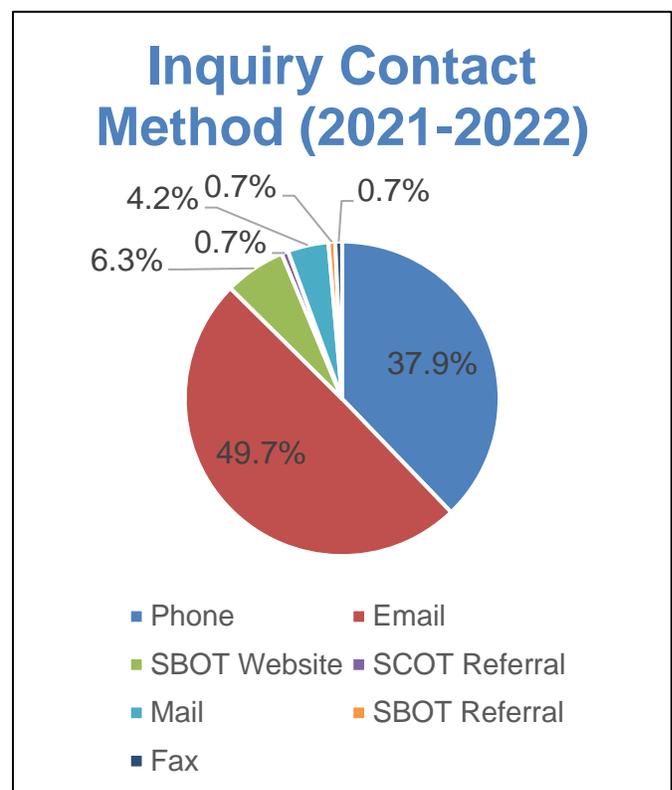
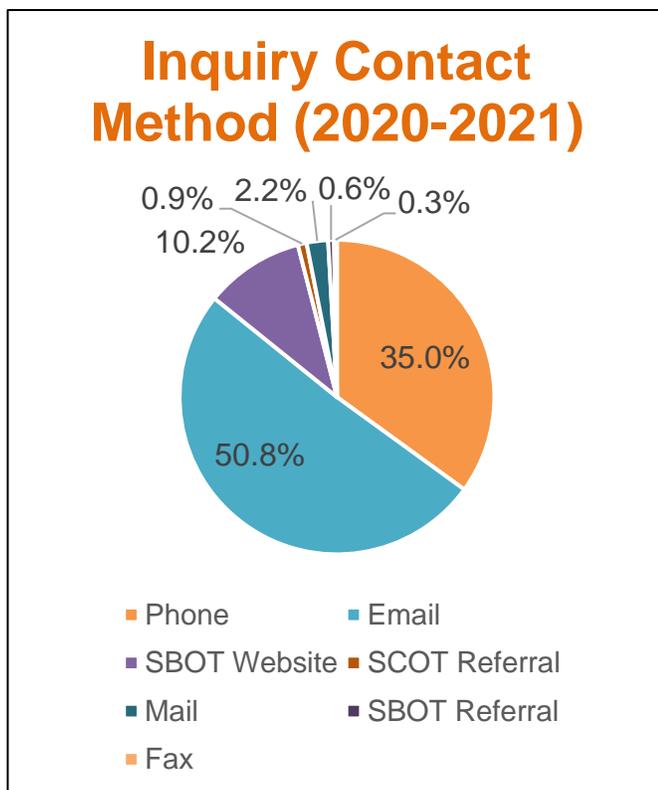
¹³ A copy of the Ombudsman’s current website is included as Exhibit 3 to the Appendix.

January 27, 2021, where she presented her report for the 2020-2021 year and took questions and comments from those in attendance.

PUBLIC INQUIRIES – CONTENT AND RESPONSES

Inquiry Content

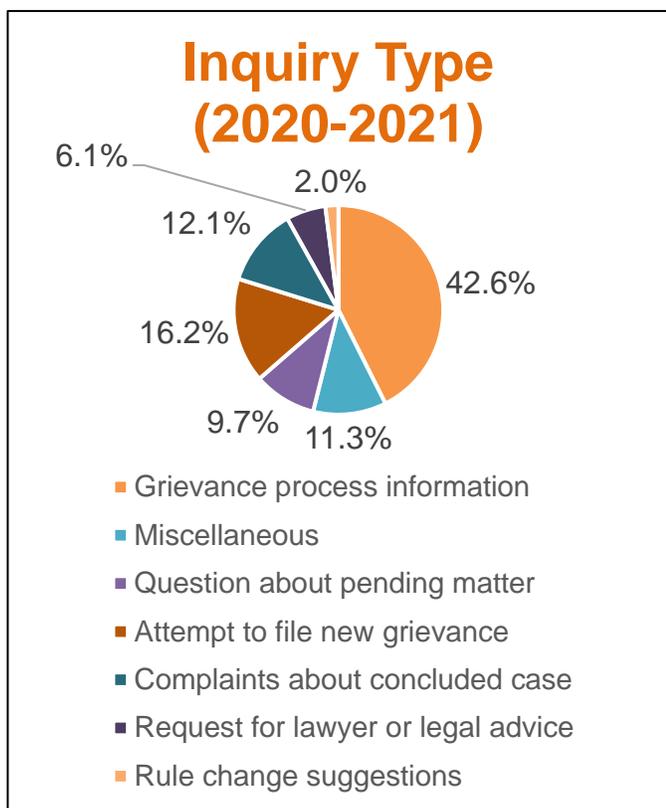
The Ombudsman received 766 inquiries during the period from September 1, 2021 to August 31, 2022. This volume is consistent with the number of inquiries received last year, representing a 2% decrease. This levelling off after several periods of precipitous growth in inquiries could indicate that knowledge of the office has reached a saturation point and denote the typical number of inquiries that could be expected in a normal year. The Ombudsman will continue to evaluate and report on this in future reporting periods. In the meantime, the office maintained the high level of efficiency it established last year to continue accommodating the high level of traffic.



As shown in the charts above, people contacted the Ombudsman by phone, email, the State Bar of Texas website, referrals from the Supreme Court of Texas and the State Bar of Texas, mail, and facsimile. Similar to the stabilizing trend in the overall number of inquiries, the various contact method percentages stayed fairly steady this year, with inquirers contacting the Ombudsman by phone increasing by only 3% and those using email staying about the same. Contacts via the State Bar of Texas’ website decreased by 4% and the percentage of people who contacted the office via mail doubled, from 2% to 4% of the overall inquiries. Although these are moderate changes, it appears that some of the trend toward electronic communication that had been experienced over the past two reporting periods has leveled out and may be reverting back towards phone and mail. If some of the increased electronic preference was a result of the COVID-19 pandemic, then this stabilization makes sense as restrictions continue to lessen. While this does not greatly

affect the office’s operations, it could mean that the Ombudsman has to spend more time on each individual inquiry because phone calls generally take more time to handle than emails, with some calls lasting over an hour. Additionally, it can sometimes take several tries to get an individual on the phone, which takes resources and can extend the time a file is open. In an effort to give people who have called the option to reach out electronically, the Ombudsman will continue to provide her email address on the office’s outgoing voicemail message, which may encourage email communication in addition to or instead of phone calls.

Although they continue to constitute a small number of inquiries at a combined 1.4% 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 hope is that the Ombudsman will continue to be a helpful outlet for others in the grievance process in the future.



As is shown in the Inquiry Type charts above, most people still 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 40% of inquiries. While this continued to be the reason most people contacted the office, there was a 3% drop in this category from the previous reporting period. This drop continued the trend seen during the 2020-2021 reporting period, where this category decreased by 6%.

On the other hand, there was a 4% increase in the percentage of individuals contacting the Ombudsman to complain about a concluded case. While this may seem minor in raw numbers, it is four times the increase

seen in this category during the last reporting period and is therefore significant. This growth could represent a surge in 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 uptick 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 1%, the overall number of recommendations received from the public is significantly greater.

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 this percentage was steady for the past two reporting periods, it decreased by almost 3% during the timespan covered by this report. Because this label is given to non-relevant inquiries, this decrease is a welcome one which hopefully signals that members of the public have a better understanding of the role of the Ombudsman. To further reduce these, the Ombudsman will continue to brainstorm ways to inform potential inquirers of the powers and limits of the office, whether through the website or on outgoing voicemail messages.

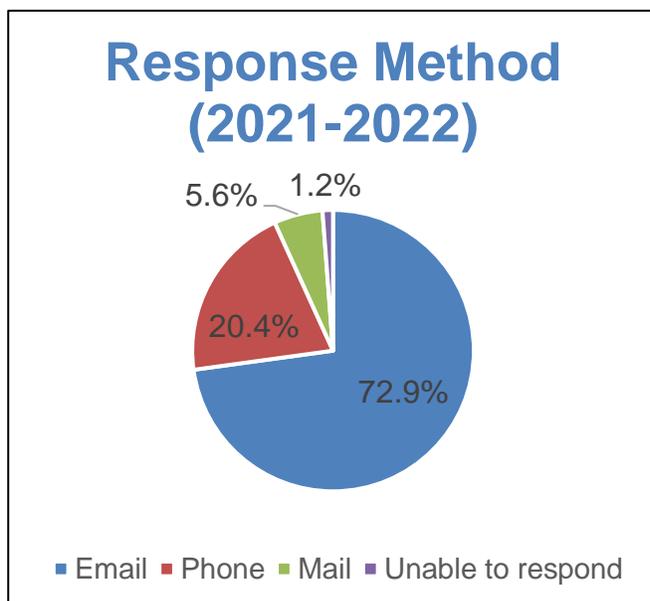
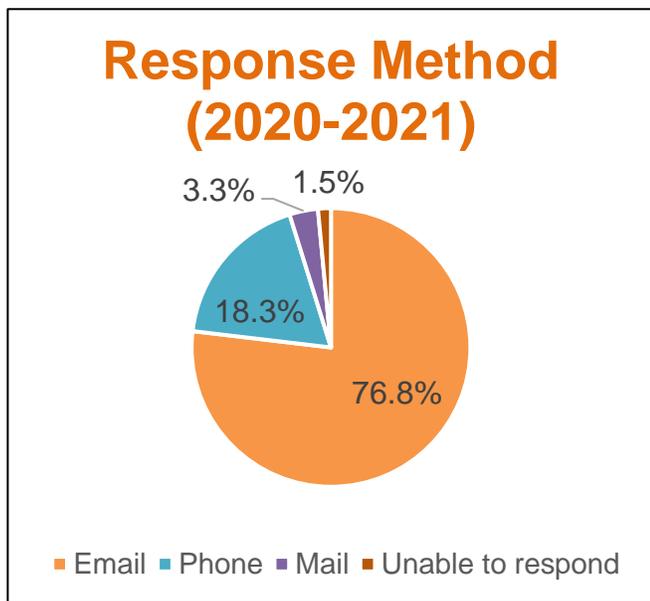
Beyond the statistics collected and provided above, the Ombudsman also compiled information about: (1) the types of cases the inquirers were contacting the Ombudsman about; (2) the relationship of the respondent-attorney to the inquirer; (3) and the alleged attorney behavior that is the subject of the 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. The most significant change this reporting period was that the percentage of inquirers who mentioned that they are having issues in a criminal case increased by 16%, while those who mentioned wills and estates (7%), real estate (8%), and employment cases (3%) all decreased. This could indicate a trend in the number of these cases, a change in the relative satisfaction of the client, or it could simply mean that clients in criminal cases are more likely to contact the Ombudsman. Similar to the previous reporting periods, an overwhelming number of the inquirers who identified the target of their complaint were having issues with their own attorney (51%), but there was a slight increase in the percentage of inquirers contacting the office about problems with a friend's or relative's attorney or an attorney that they have no relationship with. This reporting period, the attorney behavior brought up the most by inquirers continued to be non-responsiveness, with 39% mentioning this issue. 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. Notably, this reporting period saw a decrease of almost 8% in those complaining of an attorney displaying unprofessional behavior unrelated to the law, but those who mentioned an alleged conflict of interest increased by 6%.

Finally, as was also true last year, most inquirers were members of the public or current or potential complainants. After noticing this previously, the Ombudsman took particular note of when an inquirer identified themselves as an attorney. This percentage decreased during this reporting period from 6.6% to 3.9%. While this reduction is notable, the hope is that 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 will increase its visibility within the attorney community and encourage them to use the Ombudsman as a resource. These inquiries occurred for a wide variety of reasons, including attorneys wanting to know whether or not particular actions constitute misconduct, people asking for certified copies of their disciplinary history, and even a couple of instances of attorneys acting as a complainant or respondent 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 more attorneys will contact the office to offer their insights into 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.¹⁴

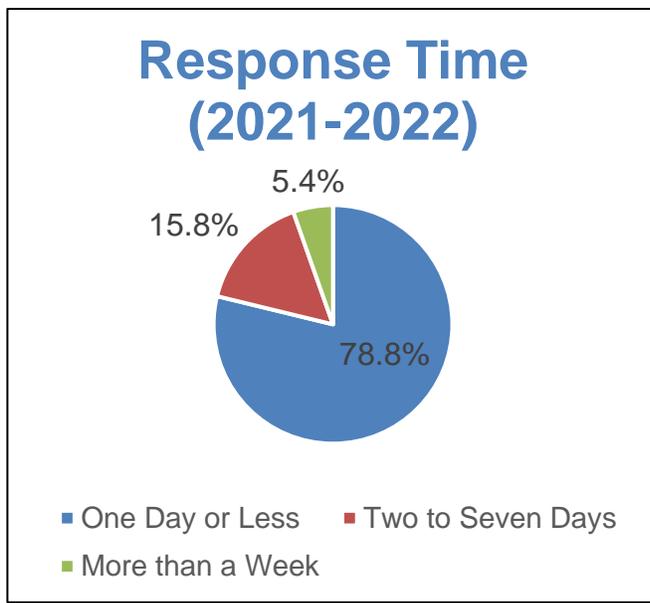
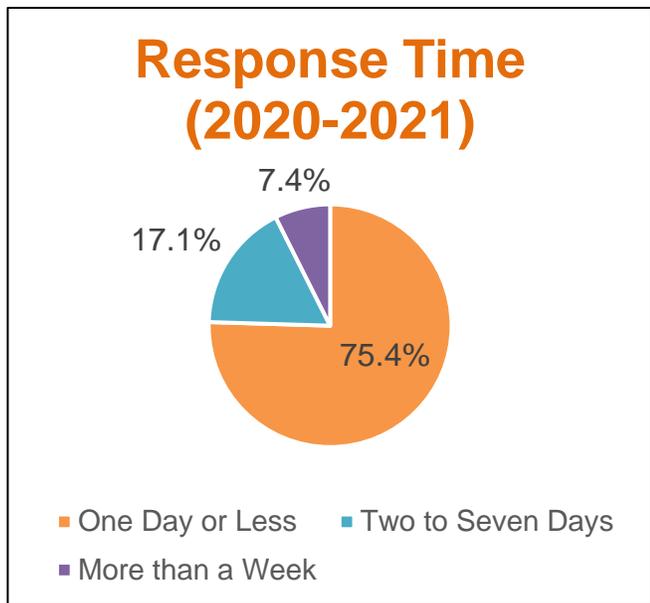


For some responses, it was also necessary to include information on other programs or agencies. For example, when someone wishes to file a complaint against a judge, the response would include information on how to contact the State Commission on Judicial Conduct. On the other hand, when a person is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

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

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.¹⁵ 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 above. 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 72.9%. 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 a 4% decrease and phone and mail responses each increasing by 2%. Similarly to last year, the Ombudsman also saw a few instances where they were unable to respond to an inquiry. Per the chart above, this only constituted 1.2% of all inquiry responses and often occurred because an individual did not leave any return contact information.



The Ombudsman makes every effort to respond to each inquiry as fully and efficiently as possible. This year, the average time to close an inquiry was 1.5 days. This is a 25% improvement from the 2-day response time achieved last year and is the quickest turnaround average ever for the office. The 1.65-day average from the 2019-2020 reporting period comes closest to this efficiency but did so with 25% less total inquiries. As further detailed in the chart above, 78.7% of all inquiries were responded to and closed within a day and 94.7% of all inquiries were handled within a week, both of which were improvements from the 2020-2021

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

reporting period. 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

Like previous reporting periods, the Ombudsman’s office received many complaints about the alleged lack of transparency of the attorney discipline process. One common refrain was that individuals going through the process are not provided with enough information up-front about what to expect. In that vein, both complainants and respondents alike noted that they found the entire disciplinary process vague, confusing and secretive. Specifically, they continued to complain that it was difficult to get status or process information from the Chief Disciplinary Counsel’s office, noting that investigators and attorneys assigned to their grievances rarely returned their calls or emails. Not only does this lack of communication breed frustration and anger, in one instance it led to an unnecessarily long delay in a complainant being provided with a copy of a statement from the respondent, which she needed to provide a rebuttal. In that case, a series of misunderstandings and clerical errors led to the delay. However, if the complainant’s requests for communication had been promptly returned, the error would have been discovered much sooner. Ultimately, the delay did not result in procedural inaccuracies, but it did lead to confusion and frustration.

Additionally, many continued to express concerns that they were not given a thorough explanation of why their 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.¹⁶ Inquirers emphasized that the lack of specificity in the letters implied that the body issuing them did not 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.¹⁷

Complaints Related to Bias

Beyond transparency-related complaints, inquirers also frequently brought up the allegation that the grievance process and the State Bar of Texas as a whole are biased in favor of attorneys. While these concerns are inherent in a regulatory arena, particularly one involving self-regulation, a couple of comments stood out. First, many complainants believe that the investigators handling their grievance favored the respondents, noting that the investigator was more likely to reach out to the respondent, answer questions from the respondent, and give extensions to them. Additionally, these complainants also claimed that the investigator was more likely to insinuate that they were lying and less likely to press the respondent to explain an inconsistency. This purported bias extended to the hearing process. Complainants asserted that the Chief Disciplinary Counsel’s office and panel members, whether at a Summary Disposition Panel or

¹⁶ 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).

¹⁷ Redacted examples of a typical dismissal letter sent to a complainant by the Chief Disciplinary Counsel’s office when a 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.

investigatory hearing, appeared to be on the respondents' side. In that vein, they complained that they were not allowed to question any witnesses or provide an independent statement and were often not given access to documents referred to at the hearing, such as subpoenas.¹⁸ Essentially, many criticisms by complainants in this area are because they do not feel like they have any control over or input in the process, particularly when it comes to the hearings.

Other Complaints

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

One suggestion that was new this year and was brought up by several complainants was the need for standardization throughout the grievance process. In particular, a few individuals noted that their experience when filing a grievance was markedly different depending upon which investigator handled the matter or which grievance committee members made up the panel that oversaw their hearing. Based on this, several inquirers suggested establishing investigatory procedures or standard hearing procedures that are used no matter the hearing chairperson along with yearly training on those procedures. As was true in previous years, there were also some complaints related to accessing the grievance process. Some individuals noted that it was difficult for them to file a grievance using the methods currently available, namely online submission, mail, or fax. Specifically for individuals with physical or mental disabilities, it was suggested that making at least part of the grievance process verbal would be a great benefit. Although this complaint has been noted in previous reports, it was mentioned here because it persists.

RECOMMENDATIONS FOR IMPROVEMENT

The Chief Disciplinary Counsel and State Bar of Texas process and investigate thousands of grievances per year 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.¹⁹

Recommendation 1: For Grievances Upgraded for Investigation, Designate a Point Person to Respond to Questions from Complainants and Respondents

As noted above and in previous reports, one of the main complaints received from inquirers is the lack of communication from the Chief Disciplinary Counsel's office, particularly during the investigation process. This office understands that investigators are often extremely busy and that some complainants and respondents submit an excessive number of questions to the Chief Disciplinary Counsel's office and are unrealistic in how quickly they expect a response. It is the hope that if the participants in the process know

¹⁸ It is worth noting that while this complaint is normally voiced by complainants, one respondent contacted the office to voice this same concern during this reporting period. In that instance, the respondent noted that their attorney was not allowed to question the complainant during an investigatory hearing, which he or she believes is unfair. The respondent was worried that this indicated the Chief Disciplinary Counsel's office and panel are biased against him or her and would lead to an incorrect result.

¹⁹ Note that this report makes different recommendations from those offered in the previous 3 reports, which were (1) enable communication and filing of grievances through email; (2) send acknowledgement communication to confirm 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; (6) provide more information about the process in the grievance form; (7) provide complainants and respondents with a way to indicate their preferred contact method; and (8) provide complainants and respondents with more information about upcoming hearings. 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.

who to go to and the best way to communicate, they will be less frantic and more focused in their inquiries. Additionally, having one person respond will provide a consistency in the answers. As discussed above, there was one instance during this reporting period where a clerical error led to a large delay in getting a complainant needed documents and also led to a miscommunication of deadlines during the process to the respondent. If one individual were responsible for responding to all questions, this error may not have occurred. Of course, this does not mean that the work of calculating deadlines or providing answers would be up to the point person alone. It merely means that they would be the only one communicating deadlines and answers to the inquirer.

Recommendation 2: Emphasize the Role of Complainants as Witnesses at the Beginning of the Grievance Process

As discussed above, the Ombudsman receives numerous objections from complainants about the alleged bias of the system, with many in particular noting their lack of control over and participation in the hearing process. What many complainants do not realize is that some of this is by design. While they see themselves and often refer to themselves as a “party” in the hearing or during the investigation process, they are actually just witnesses. Just as a victim in a criminal case has a vested interest in the prosecution of a criminal but cannot dictate the investigation or directly ask questions of witnesses during the trial, a complainant is there to provide information but does not have the rights of a party in a lawsuit. While this distinction is a narrow one, taking the time to explain it more thoroughly to complainants at the beginning of the investigatory process could lead to less frustration, anger, and questions down the line.

CONCLUSION

In a reporting period that saw the stabilization of many trends, including a levelling off of the number of inquiries, the Ombudsman focused on advancing customer service and response times. 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.