



The Grievance Oversight Committee
Appointed by
The Supreme Court of Texas

Report 2011

P.O. Box 12487
Austin, Texas 78711

800.204.2222 Ext. 1508
512.427.4108 Fax

www.TXGOC.com



The Grievance Oversight Committee
Appointed by
The Supreme Court of Texas

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2010 -2011

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*Reply to
Judy Sebesta
jsebesta@sbcglobal.net*



June 1, 2011

The Honorable Chief Justice and Justices of the Supreme Court of Texas:

On behalf of the Grievance Oversight Committee, I am pleased to submit the Committee's 2011 Report in accordance with this Honorable Court's Order Reconstituting the Grievance Oversight Committee, Misc. Docket No. 11-9003.

The Committee again traveled the State throughout this past year in pursuit of input about the grievance governance process. The GOC continues to believe nothing can replace local visits in order to understand fully those processes that are working and those that need improvement. We visited with members of the judiciary, the public, respondents' counsel and representatives of the scores of men and women who work in the system of grievance governance.

I want to express our thanks for the opportunity to serve the Court, the citizens of Texas and the legal profession. The GOC continues to enjoy a close working relationship with the State Bar staff and we are especially indebted to Don Jones for his continued invaluable assistance to the Committee, as well as Jennifer Reames for her help on so many of our projects and tasks..

The GOC will be available to discuss this report with the Court, or answer any questions the Court might have concerning our comments and recommendations. Again, thank you for the privilege of serving the Court in this important undertaking.

Respectfully submitted,

A handwritten signature in cursive script that reads "Judy Sebesta".

Judy Sebesta
Public Member
Chair, 2011

cc:

Terry Tottenham, Esq., President, State Bar of Texas
Bob Black, Esq., President-elect, State Bar of Texas
Pablo Almaguer, Esq., Chairman of the Board of the State Bar of Texas
Betty Blackwell, Esq., Chair, Commission for Lawyer Discipline
Linda Acevedo, Esq., Chief Disciplinary Counsel
W. Clark Lea, Esq., Chair, Board of Disciplinary Appeals
Patrick Wolter, Esq., Chair, State Bar Board Discipline & Client-Attorney Assistance
Committee



The Supreme Court of Texas
Grievance Oversight Committee

Report
2011

GRIEVANCE OVERSIGHT COMMITTEE

JUNE 2011 REPORT

TABLE OF CONTENTS

HISTORY AND SCOPE OF REPORT 1

CLIENT ATTORNEY ASSISTANT PROGRAM (“CAAP”) 2

OMBUDSMAN 7

GRIEVANCE REFERRAL PROGRAM (“GRP”)..... 11

PROSECUTORIAL REPORTING OF ATTORNEY CONVICTIONS 12

EDUCATION..... 13

GRIEVANCE SYSTEM SYMPOSIUM..... 13

TEXAS BAR EXAM 14

CASE MANAGEMENT & STATISTICAL REPORTING 15

ACCOLADES 16

2011 REPORT TO THE SUPREME COURT OF TEXAS

GRIEVANCE OVERSIGHT COMMITTEE

History and Scope of the Report:

The Grievance Oversight Committee (the "Committee" or "GOC") hereby submits its 2011 Report as ordered by the Texas Supreme Court. The history of the Committee is detailed in our 2007 Report, and anyone not familiar with our history may refer to that report. Additionally, the Texas Supreme Court's Amended Order Reconstituting the Grievance Oversight Committee, dated February 22, 2011, Misc. Docket No. 11-9003, revised the terms of Committee members.

During the year, the Committee travels across Texas to meet with local and state bar leaders, grievance governance volunteers, judges, and the public. It is an intense process that requires each member to draw on his or her substantial experience in the grievance system to question and evaluate the answers and comments we receive. In addition, the GOC reviews annual reports and asks hard questions. The GOC is not an audit committee, and has no regulatory oversight authority. This 2011 Report includes updates and further recommendations to our comments in previous reports, as well as new topics brought to our attention.

Throughout this process, the GOC continues to find that the dialogue that results from its reports encourages improvement of the grievance system. The Committee's goal is to continue to ask hard questions and evaluate the answers we receive and then report on what we see and hear to our one constituent, the Supreme Court of Texas. The Court has the ultimate responsibility to oversee the grievance system. Our responsibility is to evaluate what we see and hear, comment, and suggest recommendations to the Court based on this constant review of the grievance system. The Committee appreciates the opportunity to provide input to the Court as it oversees the grievance system.

Client-Attorney Assistance Program

Background:

The Client-Attorney Assistance Program (“CAAP”) is “a statewide dispute resolution program” of the State Bar.¹ It “assists clients and attorneys in resolving problems affecting their relationships.”² However, it also “supports the attorney discipline process by providing information about the grievance process and grievance forms upon request.”³ The CAAP website states that CAAP is supposed to help callers “resolve minor problems affecting” the attorney-client relationship “if the issue does not involve misconduct.”⁴

During the 2009-2010 Bar year, CAAP received approximately 45,000 calls (some of which are multiple calls from the same person) and resolved 734 cases without any grievance being filed.⁵ (By comparison, CAAP received approximately 54,152 calls during the 2005-2006 Bar year.) Approximately 20 percent of the persons who contact CAAP are not satisfied with the results. CAAP provides such persons with a grievance form, if the person requests the form.

The CAAP staff consists of nine persons. Most are certified mediators, but only the CAAP Director is a lawyer. All other staff members are non-lawyers. The GOC was informed that CAAP staffers do not receive formal training before they begin handling calls. CAAP staffers also do not receive any formal training concerning the Texas Disciplinary Rules of Professional Conduct. Their training is essentially on-the-job.

Staff Training:

CAAP is the intake point for almost all calls from persons who have a potential complaint against a lawyer. CAAP employees who answer those telephone calls perform a critically important role in assisting callers to decide whether to seek discipline against the lawyer or to pursue some other remedy, such as informal dispute resolution.

To know whether a call raises an issue of possible professional misconduct obviously requires knowledge of the rules governing the professional conduct of lawyers -- principally the Texas Disciplinary Rules of Professional Conduct. Moreover, to identify potential rule violations requires a working knowledge of the rules and the laws that affect the attorney grievance

¹ Commission for Lawyer Discipline, Annual Report 25 (2009-2010) (hereinafter “CLD 2010 Report”).

² *Id.*

³ *Id.*

⁴ See

http://www.texasbar.com/AM/Template.cfm?Section=Client_Attorney_Assistance_Program_CAAP_

⁵ CLD 2010 Report 25.

process, including the Texas Rules of Disciplinary Procedure, the Texas Code of Judicial Conduct, and the Texas Penal Code.

Thus, in-depth training concerning those rules and standards is essential for CAAP staff. To enhance CAAP's capability, one option is to add lawyers to the CAAP staff. For example, compare Rule I(B) of the American Bar Association's Model Rules for Lawyer Disciplinary Enforcement, which addresses the role of a "central intake office." The Commentary to that rule states the following:

A simple and direct procedure for making a complaint is needed. Complainants should not be expected to know the distinctions among component agencies. They need a central intake office, one clearly designated agency to which to take any type of complaint regarding lawyer conduct. A toll free telephone number for the central intake office should be publicized. The staff of the central intake office should process all inquiries, regardless of the source or manner in which received and notwithstanding the authority of disciplinary counsel to receive such inquiries and to refer them to the central intake office. The skilled lawyers of this office should provide the expertise needed to determine where prima facie valid complaints should be directed and make timely referrals to appropriate agencies. (Emphasis added.)

Hiring lawyers instead of non-lawyers for CAAP might increase staffing costs significantly. An alternative might be to hire some additional lawyers to provide more detailed, substantive supervision and training concerning potential rule violations on an ongoing basis.

Without substantial training and education, a non-lawyer would lack the essential knowledge required to identify all of the possible rule violations suggested by callers' factual descriptions. Currently, though, the CAAP employees who take those calls are non-lawyers -- and they do not receive any formal training concerning the rules and statutes governing the professional conduct of lawyers before beginning to answer those phone calls. According to the CAAP Program Director, after a CAAP employee begins working, most of the training is "on the job" and consists of listening to other staff members answer calls.

The CAAP training materials merely state that the CAAP staffer should "[w]ith each call, use the handbook containing the disciplinary rules and procedural rules. By becoming familiar with those rules, staff is more effective in recognizing the symptoms of unethical conduct."⁶ But that

⁶ Client-Attorney Assistance Program, *Training Schedule for New Staff* 15-16. The CAAP staff training materials purport to distinguish between "cognizable" and "non-cognizable" lawyer conduct. However, some of the categories identified as "non-cognizable" could rise to the level of a potential rule violation. For example, listed as "non-cognizable" conduct is "a refusal on the part of the attorney to release files or documents." *Id.* at 24. Texas Disciplinary Rule of Professional Conduct 1.15 expressly states that "[u]pon termination of representation, a lawyer shall . . . surrender[] papers and property to which the client is entitled." On the other hand, at another point the CAAP training materials appear to set the standard too high for what must be

directive seems to understate the importance of the issue. It is not simply a matter of being “more effective.” Unless CAAP staff members have a thorough familiarity with those rules and the other governing rules and laws concerning lawyer conduct, it is difficult for the staff to be adequately prepared to handle calls, identify potential issues of professional misconduct, and assist callers to choose the appropriate direction of dispute resolution and/or attorney discipline.

Recommendation: CAAP intake staff members who take calls from persons who have a possible complaint concerning a lawyer either should be lawyers or should be non-lawyers who have extensive training concerning the Texas Disciplinary Rules of Professional Conduct and related standards governing the conduct of Texas lawyers. For example, the Texas Center for Legal Ethics and Professionalism (TCLEP) or some other entity could sponsor and provide such a training program.

Handling Reports of Rule Violations:

CAAP training materials describe CAAP’s first purpose as follows:

to serve the public and State Bar of Texas membership by providing pro-active solution-oriented, confidential, and neutral forum for mediating and resolving non-cognizable conduct offenses, disputes,⁷ and misunderstandings between members of the public and Texas lawyers

As noted above, most CAAP staff members are certified mediators. However, all of the CAAP employees who receive the calls from the public are non-lawyers. CAAP appears to do an excellent job in assisting callers and lawyers to achieve a “mediated” resolution of individual disputes. The Committee congratulates CAAP on its continuing success in performing that function.

However, the Committee is concerned that CAAP is overemphasizing the private dispute-resolution function and underemphasizing the disciplinary function. Resolving the individual problem of a particular caller is only part of CAAP’s responsibility. CAAP is a component of the disciplinary system, and CAAP obviously should not downplay the potential professional misconduct or disciplinary implications of a lawyer’s misconduct simply because the lawyer might agree to resolve a particular client’s (or non-client’s) dispute after being contacted by CAAP. Moreover, a lawyer who is engaging in a pattern of misconduct that may threaten other clients or the public (e.g., unconscionably high contingent fees) should not be able to use a mediated solution achieved through CAAP to conceal or effectively immunize such a pattern of

present to constitute a “cognizable” misconduct that should be referred to the grievance system: The explanation of “cognizable” misconduct states that: “In these situations, the facts are alarming. Money was stolen; the lawyer has utterly failed to carry out his or her responsibilities.” *Id.* at 15-16. Obviously, a violation of the disciplinary rules need not rise to the level of “utterly” failing to carry out responsibilities.

⁷ Client-Attorney Assistance Program, *Training Schedule for New Staff* 4 (emphasis added).

misconduct. A lawyer who engages in misconduct with one person may engage in similar misconduct with others. Solving an individual's problem and then closing the file on the lawyer may undermine a central purpose of the disciplinary system -- protecting the public from lawyers who engage in misconduct.

Thus, CAAP employees should be alert to whether any rule violation is alleged to have occurred. If a rule violation is involved, CAAP should offer the caller a grievance form and should explain the role and functions of the disciplinary process, including protecting other clients and members of the public, maintaining respect for the profession, and deterring repetition of misconduct.⁸

Some of the language in the CAAP staff training materials could be interpreted as instructing CAAP employees to discourage callers from filing a complaint. For example, the materials contain this instruction for CAAP staff:

Explain that filing a grievance is an option available to address attorney misconduct or unethical behavior. It is not a "quick-fix." This process takes several months and does not address the caller's immediate concerns on the complaint, nor does this process allow the Director or Program Associates of the CAAP program to intervene on behalf of the caller/client for purposes of expediting their legal matter.⁹

Recommendation: The Committee recommends that CAAP modify its call-intake procedures so that when a person calls to complain about a lawyer (1) the CAAP staff member who handles the call determines whether the caller's factual description identifies conduct that might constitute a disciplinary rule violation, and (2) if so, the staff member should provide the caller with access to a disciplinary complaint form and describe the purposes of the disciplinary process without discouraging the caller from filing a complaint.

Confidentiality and Non-Reporting of Misconduct:

CAAP generally treats all of its contacts with callers and lawyers as confidential, unless both parties consent to a disclosure of the information. For example, the CAAP staff training materials contain these statements:

Confidentiality is to be observed at all times.¹⁰ By answering the Grievance Information Hotline, the program associates, attorneys, and assistants become privy to confidences that the client and attorney have heretofore shared among themselves. In order to preserve the dignity of the client-attorney relationship and

⁸ Cf. Texas Rule of Disciplinary Procedure 2.18 ("In determining the appropriate [disciplinary] Sanctions, the Evidentiary Panel shall consider: . . . [t]he damage to the profession; . . . [t]he avoidance of repetition; . . . [t]he deterrent effect on others; [t]he maintenance of respect for the legal profession . . .").

⁹ Client-Attorney Assistance Program, *Training Schedule for New Staff* 18-19 (emphasis added).

¹⁰ *Id.* at 4.

encourage candor so that effective solutions may be obtained, absolute confidentiality must be observed at all times. There are only two exceptions: one is when both parties waive confidentiality and the other is when someone's life is at risk.¹¹

In short, even if CAAP receives a report of clear, egregious lawyer misconduct, CAAP will not file a complaint or refer the matter for possible discipline.

This procedure is difficult to reconcile with the standards set forth in the Texas Disciplinary Rules of Professional Conduct for reporting lawyer misconduct. Specifically, Rule 8.03(a) imposes a duty to report misconduct:

[A] lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authorities.

The Disciplinary Rules also generally require that lawyers ensure that non-lawyer staff members comply with those same professional standards. Disciplinary Rule 5.03(a) provides:

With respect to a non-lawyer employed . . . by or associated with a lawyer: (a) a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer . . .

The CAAP Director and CDC regional counsel described the confidentiality policy as arising from internal policy, rather than from any rule.¹²

Recommendation: CAAP lawyers and staff should follow the standards set out in Disciplinary Rule 8.03(a). If it appears a lawyer has committed a violation of the rules of professional conduct that raises a substantial question concerning that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects -- and a caller decides not to report the disciplinary violation -- CAAP should immediately report that conduct for possible disciplinary action.

¹¹ *Id.* At 5 (emphasis added).

¹² Texas Rule of Disciplinary Procedure 2.16 generally requires CDC staff to maintain as confidential "all Disciplinary Proceedings and associated records." However, Rule 1.06(L) defines "Disciplinary Proceedings" as including only "the processing of a Grievance, the investigation and processing of an Inquiry or Complaint, presentation of a Complaint before a Summary Disposition Panel, and the proceeding before an Evidentiary Panel." Thus, the Rule 2.16 confidentiality obligation appears to be inapplicable before a grievance is filed.

Ombudsman

The Need for an Independent Ombudsman:

The Ombudsman is employed and supervised by the Office of Chief Disciplinary Counsel (CDC). The 2009-2010 Annual Report of the Commission for Lawyer Discipline describes the Ombudsman's basic functions as follows:

The CDC's ombudsman . . . responds to calls and correspondence from complainants who are dissatisfied with the results or processing of their grievances. [The Ombudsman] is also available to discuss the grievance process in general and the requirements contained in the Texas Rules of Disciplinary Procedure. . . . Many complainants want to know the bases for dismissal by the summary disposition panels. Others raise issues about the processing of their grievances that require an investigation by [the Ombudsman], with written findings to the complainant. . . . While unable to affect the result obtained, very often [the Ombudsman] is able to provide complainants with a level of understanding that promotes better confidence in the system.¹³

For example, a letter from the Ombudsman during this reporting period stated the following:

In my role as ombudsman for the disciplinary system, your July 29 letter with exhibits to [the Chief Disciplinary Counsel and the Chair of the Commission for Lawyer Discipline] was forwarded to me by [the Chief Disciplinary Counsel] for a reply. I respond on behalf of both [the CLD Chair and the CDC], who has reviewed this letter of response.¹⁴

In short, the Ombudsman works for the CDC, reports to the CDC, and under the current arrangement, has responsibility for investigating the CDC and its staff. Asking any employee to investigate his or her employer -- possibly leading to issuance of a report critical of that employer -- potentially creates an uncomfortable situation for the employee, as well as a lack of independence and objectivity. That supervisory arrangement also may be potentially unfair to both the employee and employer, and may make open and candid communication more difficult between the employee and the employer. Likewise, for the Ombudsman to respond on behalf of the supervisor further creates an issue with objectivity and independence.

By comparison, Standard IIA of the "Governmental Ombudsman Standards"¹⁵ states that "[i]ndependence is a core defining principle of an effective and credible Ombudsman." Similarly, Standard IIA(2) provides that "[t]he Ombudsman should be appointed by an entity not

¹³ CLD 2010 Report 12.

¹⁴ Ombudsman's letter to a complainant (Aug. 16, 2010) (emphasis added)

¹⁵ United States Ombudsman Association, *Governmental Ombudsman Standards*, <http://www.usombudsman.org/en/references/standards.cfm>.

subject to the Ombudsman’s jurisdiction and which does not have operational or administrative authority over the program(s) or agency(ies) that are subject to the Ombudsman’s jurisdiction.”¹⁶

Under the current structuring of the position, the Ombudsman spends approximately 25 percent of available time on Ombudsman functions.¹⁷ Since the establishment of the Ombudsman’s position, the Ombudsman annually has conducted approximately 30 to 40 investigations of grievance processing—a total of some 240 to 320 investigations.¹⁸ The Ombudsman stated to this Committee that throughout all of those investigations the Ombudsman had not found any instance in which the disciplinary system failed to function properly. Regardless of the investigative results, the structural independence issue raises questions for any observer who attempts to analyze the Ombudsman’s investigative findings.

One CDC Regional Counsel who spoke to the Committee about the Ombudsman had a somewhat different recollection of the Ombudsman’s conclusions, at least for the last Bar fiscal year. Regional Counsel recalled two or three instances in which the Ombudsman had recommended that CDC handle matters differently in particular cases that the Ombudsman had investigated.

As noted above, one of the other functions performed by the current Ombudsman is acting as media representative for CDC. Combining the roles of Ombudsman and media representative also appears to create a functional inconsistency. Typically an agency media representative attempts to depict the agency in a favorable light to the media.

Recommendation: To establish independence in the structure, performance, and appearance of the office of Ombudsman, move the Ombudsman from supervision by CDC, and place the Ombudsman under the supervision and control of the Texas Supreme Court, Board of Disciplinary Appeal (“BODA”), or this Committee.

¹⁶ See also American Bar Association, *Resolution Endorsing Revised Standards for the Establishment and Operation of Ombuds Offices*, Standard C(1) (Feb. 9, 2004) (“The ombuds is and appears to be free from interference in the legitimate performance of duties and independent from control, limitation, or a penalty imposed for retaliatory purposes by an official of the appointing entity or by a person who may be the subject of a complaint or inquiry.”).

¹⁷ The person currently occupying the Ombudsman position also performs other duties and functions, including serving as CDC media coordinator and information coordinator, and acting as liaison with the Client Security Fund.

¹⁸ See, e.g., CLD 2010 Report 12 (noting that “[d]uring the 2009-10 Bar year, [the Ombudsman] conducted 37 investigations of this type and fielded 61 calls from complainants in her role as ombudsman”).

Suggested Options for Revised Supervision of the Ombudsman:

This Committee previously has discussed various recommendations concerning the office of Ombudsman and its possible role.¹⁹ In those previous reports, the Committee also has expressed its general views concerning the importance of having a strong, independent Ombudsman position.

The Committee recommends that in order to improve the structural independence of the office of Ombudsman, the office be moved from the supervision and control of CDC. The Committee suggests three possible options to consider for relocating the office of the Ombudsman: (1) the Texas Supreme Court; (2) BODA; (3) GOC. Each possible placement has advantages and disadvantages.

Option #1 The Texas Supreme Court: Having the Ombudsman placed directly under the supervision and authority of the Texas Supreme Court would ensure independence of the Ombudsman. The Ombudsman would have no reason for concern about possible repercussions from the CDC or CLD if the Ombudsman issued a report critical of or in some way negative toward the CDC. That is somewhat analogous to the independence that BODA has, as an entity appointed by the Court instead of by the Bar. The Committee also understands that the Court currently has certain staff to assist the Court on issues other than research and writing opinions -- including the Court's Rules Attorney and the Court's General Counsel. Because the Committee recommends restructuring and narrowing the role and responsibilities of the Ombudsman, perhaps the role could be combined with the role of another Court employee. On the other hand, assigning the Ombudsman to the Texas Supreme Court might entail some additional administrative oversight responsibility for the Court.

Option #2 BODA: A second option would be to have BODA supervise and receive reports from the Ombudsman. This option also would ensure independence, given BODA's preexisting independent status. On the other hand, BODA's role traditionally is as an appellate body, and this assignment would be a completely new role for BODA.

Option #3 GOC: A third option would be to have the Ombudsman report to the GOC. This option, too, would ensure independence. To the extent that the Ombudsman identifies systemic or grievance process issues, that input could benefit the GOC. On the other hand, the GOC's "oversight" duties, responsibilities and role do not include dedicated staff or procedures to evaluate and supervise an employee.

Call-Intake Function of the Ombudsman:

Currently if a person wants to call the State Bar to complain about a lawyer, the call goes either to CAAP or to the Ombudsman. Which office receives the call is random -- it depends simply upon which phone number the person calls. If the caller dials the State Bar's general phone

¹⁹ See the Grievance Oversight Committee Annual Reports of 2007, 2008, and 2010.

number, the call goes to the Ombudsman. If the caller dials the number shown on the State Bar website for persons who want to call about a complaint against a lawyer, CAAP will receive the phone call.

CAAP receives the overwhelming majority of intake calls and contacts. During 2009-2010, CAAP received approximately 45,000 contacts.²⁰

One inconsistency is that CAAP and the Ombudsman handle calls differently. The CAAP call staff consists of non-lawyers. The current Ombudsman is a lawyer. The CAAP staff has procedures and training materials that the Ombudsman does not use. Which procedure a caller experiences depends upon which phone number the caller dials.

Recommendation: In order to ensure consistency and overall uniformity in handling call-intake from persons who want to complain about a lawyer, CAAP should handle all such calls and that function should be removed from the Ombudsman's office.

Ombudsman Functions:

As discussed above, in Bar year 2009-2010, the Ombudsman conducted some 37 investigations, but the person who held the position of Ombudsman also had multiple other duties, including acting as CDC media coordinator and information coordinator, as well as staff attorney and investigator to the Client Security Fund. As noted previously, the roles of investigator and media coordinator, in particular, appear to be potentially inconsistent and to create the appearance of functional tension.

Certain other functions performed by the Ombudsman appear to be functions that CAAP staff already perform or could logically assume. As described in the CLD 2010 Report, those other functions include "discuss[ing] the grievance process in general and the requirements contained in the Texas Rules of Disciplinary Procedure"; advising complainants concerning whether "a grievance contains an allegation of a rule violation," "differentiating fee disputes and quality-of-service issues from rule violations from rule violations," and similar issues. CAAP staff members appear to perform some of those same functions. As discussed, that overlap or duplication of functions appears to create the potential for inconsistent standards and guidance.

Recommendation: The person who holds the position of Ombudsman should focus primarily on the complaints and questions of persons who already have been through the disciplinary process. If the person assigned to perform that function is assigned additional job duties, those duties should be selected carefully and adequately monitored to ensure that they do not create any conflict of interest with that primary function and do not duplicate the functions performed by CAAP staff members in a way that could create inconsistent standards and guidance.

²⁰ CLD 2010 Report 25.

Grievance Referral Program

The GOC met with Lisa M. Villarreal-Rios, the administrator of the Grievance Referral Program (“GRP”), who described this program of the Office of the Chief Disciplinary Counsel (“CDC”). GRP is a diversion program to identify and deal with lawyers who enter the disciplinary system as a result of minor misconduct, but who have impairment or performance issues that might benefit from a remedial or rehabilitative program.

A lawyer who participates in GRP must agree to fulfill the terms of the specifically designed remedial program. A typical program requires three to four months to complete. If the lawyer fulfills the agreement, the disciplinary complaint is dismissed. If the lawyer violates the agreement, the disciplinary complaint reenters the normal disciplinary process.

The State Bar Board of Directors revised its Policy Manual in January 2010 to codify the eligibility criteria for participation in GRP. The basic eligibility criteria that the CDC considers in determining whether to refer a case to GRP are:

1. The respondent has not been disciplined within the previous three years, and has not been disciplined for similar conduct within the previous five years.
2. The misconduct does not involve the misappropriation of funds, breach of fiduciary duty, dishonesty, fraud, misrepresentation, or a crime that would require compulsory discipline under Part VIII of the Texas Rules of Disciplinary Procedure.
3. The misconduct does not substantially harm or prejudice the client or complainant.
4. The respondent has cooperated during the proceedings.
5. Participation is likely to benefit the respondent and further the goal of protecting the public.

The GOC reviewed the form agreement that the respondent and the GRP administrator sign. It thoroughly outlines the available choices for assisting an eligible lawyer. Among the options are the Texas Lawyers' Assistance Program, self-study, Law Practice Management Consultation and other office management interventions, additional CLE, mentors, substance use assessment, mental health treatment, Lawyers Concerned for Lawyers, and provisions for restitution and return of client files. These programs are supported by ongoing consultation and counseling. If the lawyer does not fully complete the terms of the agreement in a timely manner, the underlying complaint moves forward through the usual disciplinary process.

The GOC commends GRP Administrator Lisa Villarreal-Rios and the CDC for their seemingly seamless transition from the initial administrator, Chris Long, to Ms. Villarreal-Rios as the new administrator. Ms. Villarreal-Rios's enthusiasm and sensitivity, along with her law degree and her masters in social work, have contributed immensely to the practical and important assistance she has provided to attorneys who participate in the program. It is a comprehensive program that takes significant steps to help both the attorney and the client. The GRP appears to be working very well.

Recommendation: The GOC has three recommendations to further this program: (1) Increase the profession's awareness of this program by publicizing its availability as a disciplinary option in appropriate cases. (2) Continue to capture and improve the documentation and statistical case management reporting of the program. (3) Make this valuable re-education program available to more lawyers. Only about 50 attorneys participated in this program during the current bar year.

Prosecutors Reporting of Attorney Convictions

Texas Disciplinary Rule of Professional Conduct 8.04(a)(2) prohibits a lawyer from committing any serious crime or "any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." Additionally, conviction of an "intentional crime" can lead to compulsory discipline under Part VIII of the Texas Rules of Disciplinary Procedure. However, for those rules and procedures to operate properly, the Office of Chief Disciplinary Counsel (CDC) must learn that a lawyer has committed such a crime.

For some years the Committee has received anecdotal reports that practices vary among state and federal prosecutors' offices across Texas in terms of reporting to CDC when lawyers commit crimes or are convicted of crimes. Some offices apparently have no established procedure for such reporting. Another common problem arises from normal staff turnover. In some district attorneys' offices, for example, a particular staff person may have the responsibility to collect the relevant information and forward it to the CDC, but then that person may move to another position or leave the office altogether and the reporting may lapse. While it would be preferable for each prosecutor's office to systematize the tracking and reporting of criminal cases in which the defendants are attorneys, that approach appears unlikely to be adopted and consistently implemented in all prosecutors' offices across the state in the near future.

Recommendation: The Committee recommends that CDC annually send a notice to each prosecutor's office in Texas -- including county attorneys, district attorneys, and United States Attorneys -- to request that those offices notify CDC whenever an attorney is charged with a crime or convicted of a crime. The Committee also recommends that CDC send a notice to the Texas County and District Attorneys Association to request that that Association encourage and remind its members to make such reports to CDC.

Education

The GOC is always concerned with the education of the volunteers who participate within the grievance system. As the GOC meets with those participants across the state, the GOC regularly asks the volunteers to evaluate the training they receive. Comments we received this year identified satisfactory training and education, as well as areas for improvement. Those comments included the following:

- The information/self-training CD's that are provided received favorable comment.
- Participants requested that training be conducted more than just during the first year of the volunteer's service, especially for the public members. Some volunteers commented that all participants should receive training annually.
- Some volunteers asked that the training be conducted in a more hands-on, discussion oriented format. Especially for public members, that approach would seem likely to increase comprehension of the material.
- Some reports provided to the State Bar Board of Directors summarize the sanctions from around the state. Sharing this type of report with committee members would be beneficial. The GOC believes that increasing awareness among grievance panels concerning the sanctions levied across the state by other panels would increase the consistency in sanctions.

Recommendation: The Committee recommends continuing to provide the CD training media, increasing training to more than just during the first year of service, providing more hands-on and discussion oriented training, and sharing more reports describing the sanctions imposed across the state.

Grievance System Symposium

The GOC, along with the CDC and the Commission for Lawyer Discipline, recognizes the educational benefits and the resulting development of improved processes derived from the Grievance System Symposium conducted more than three years ago. However, the schedule should be more than "when budgeted" or "as needed."

Recommendation:

- The Symposium should occur on a regular basis, no less than every other year.
- The Symposium should be attended by members of all entities that make up the grievance disciplinary processes including, but not limited to, CDC, CLD, BODA, GOC, respondents' counsel, complainants' counsel, CAAP, the Ombudsman, GRP, and committee members (public and attorney).
- The Symposium should (1) be interactive among its attendees; (2) include speakers addressing specific pre-determined areas for improvement; (3) include organized breakout sessions to facilitate group discussions and dialogue on possible areas of improvement in order to encourage cooperation and joint recommendations among the various components of the disciplinary system.

The Texas Bar Exam

Currently the Texas Bar Exam does not include any questions specifically addressing the Texas Disciplinary Rules of Professional Conduct (“Texas Disciplinary Rules”). Rule 5 of the Rules Governing Admission to the Bar of Texas requires that applicants for a Texas law license must show that they have passed the Multistate Professional Responsibility Examination (MPRE). The MPRE is based on the ABA Model Rules of Professional Conduct. It does not have questions concerning the Texas Disciplinary Rules. Yet the ABA Model Rules and the Texas Disciplinary Rules differ in important respects, and for the most part, the Texas Disciplinary Rules govern the conduct of Texas lawyers.²¹ Currently, most applicants for a Texas law license in other states receive no formal instruction or education concerning the Texas Disciplinary Rules.

Recommendation: The Committee believes the addition of one or more legal ethics questions specifically based on the Texas Disciplinary Rules would ensure that Texas applicants and newly licensed attorneys review and study the Texas Disciplinary Rules before beginning law practice in Texas. We encourage the Court to amend the Rules Governing Admission to the Bar of Texas to add or incorporate as an examination subject a legal ethics question specifically dealing with the Texas Disciplinary Rules of Professional Conduct.²²

²¹ In some instances the ABA Model Rules also apply – such as in certain federal court proceedings. *See, e.g., In re Proeducation Intl., Inc.*, 587 F.2d 296, 299 (5th Cir. 2009); *In re Dresser Indus. Inc.*, 972 F.2d 540, 543 (5th Cir. 1992).

²² We note that the current Texas Bar Examination Subjects list includes these categories: Multistate Subjects; Multistate Performance Test; Texas Essay Subjects; Cross-Over Topics; and Procedure and Evidence Subjects. More specifically, for example, the Procedure and Evidence Subjects include “Texas civil procedure and evidence, including jurisdiction” and “Federal and Texas criminal procedure and evidence.” See http://www.ble.state.tx.us/Rules/NewRules/rulebook_toc.htm

Case Management and Statistical Reporting

In previous years, the Committee has received various statistical reports from the CDC, the CLD, and other entities in the disciplinary system. The data reported covers many areas of the State Bar, from lawyer population to the diversity makeup of various grievance committees (including public members), areas of practice, grievance filings, disposition, types of rule violations, disciplinary sanctions, regional statistics, etc. As stated in CDC's recent Case Management System Request for Proposal ("CCMS RFP") dated January 24, 2011, "the collection of this data is directly tied to the public's perception of the ability of the State Bar of Texas to discipline its own lawyers and protect the public from unethical practitioners."

During at least some past periods, insufficient statistical information was available to permit adequate performance review. Sometimes that data has been reported inconsistently across the state and among the various disciplinary system entities. Again, the CCMS RFP recognizes prior reporting deficiencies and problems, including that "data and documents regarding CDC cases would be splintered between multiple databases" or even "independently maintained lists resulting in fragmentation of case data."

Not only was it difficult to collect consistent data, but it has also been difficult to determine the positive or negative impact that various changes in the system may have had on the disciplinary statistics. For example, the various rule changes over the years may or may not have affected the severity of sanctions or the workflow timeline. Also, the absence of data concerning the effect of closing regional offices has complicated the analysis of the number of grievance filings from region to region. Similarly, if better data were available over time, a better assessment would be possible concerning the statistical effects of programs such as GRP or CAAP.

Because of the absence of adequate statistical information, the GOC, as well as others, have often had to focus on anecdotal reports from participants in the system. To its credit, the CDC states in the CCMS RFP that it has "recognized the necessity to replace its current system and provide a consolidated repository for all core information throughout the organization."

The Texas Supreme Court has assigned GOC the responsibility to review available current reports and statistics generated by the various entities of the disciplinary system. Better statistics and other data are critically important, both for GOC to perform that assignment and for the various disciplinary system components to enhance their own self-evaluations. According to the CCMS RFP, the contract for this new CCMS should have been awarded by the end of April 2011, and a final acceptance of the system should occur as early as October 2011. This is a major undertaking for CDC. The new system should improve the collection of data and streamline case management across the state. CDC also intends to convert legacy data to the new system, to the extent possible, with the goal of obtaining "management information that is timely, reliable, and will facilitate faster and easier decision-making."

The GOC looks forward to the finished CCMS product and with it the improved ability to accomplish our responsibilities to the Court.

Accolades

The GOC wants to thank Justice Don Willett as the Court's 2010-2011 liaison to the GOC. The GOC appreciates Justice Willett and the Court staff for their assistance and guidance. Justice Willett's willingness to set aside time to meet with us, both in person and by phone, has been invaluable in the performance of our duties for the Court.

This August, the GOC will feel the void created by the term expiration of Virginia Bowers, a public member, who has served the Court on the GOC for more than a decade. Virginia's unselfish willingness to contribute her time and her experience to the betterment of the legal profession in the State of Texas began with her volunteer service to a local grievance subcommittee in Dallas in 1979. Virginia's tireless contributions to the grievance governance processes cannot go without special recognition in this 2011 Report to the Court.

It is difficult to single out the many individuals whose contributions continue to be responsive to the needs of an ever growing and changing grievance system. Therefore, the GOC thanks all who met with us during the year from around the State, to the many participants of the grievance governance system – both attorney and public members – who have volunteered their time to policing this profession. The GOC will continue to assist in the pursuit of a better grievance governance system, and it is to this goal that the Grievance Oversight Committee will continue to dedicate itself.