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THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY THE SUPREME COURT OF TEXAS

November 30, 2020

Honorable James D. Blacklock
Justice, Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

RE: Grievance Oversight Committee Biennial Report 2020

Dear Justice Blacklock:

Thank you for the opportunity to comment on the Grievance Oversight Committee's 2020 biennial report, recently submitted to the Supreme Court of Texas. The Board of Disciplinary Appeals (BODA) has reviewed the report and appreciates the Committee's thorough review and evaluation of the grievance system and its thoughtful recommendations. As mentioned in the report, we have been in contact with the Committee, and we look forward to continuing discussions regarding BODA's contribution to the disciplinary system.

BODA recognizes and shares the Committee's concerns with regard to ensuring compliance with terms of probated suspension, including the payment of restitution. We appreciate the report's discussion of the Chief Disciplinary Counsel's (CDC) internal policy of bringing revocation proceedings only for failure to pay restitution or practice of law while suspended. It is not our role to scrutinize CDC policy, and it is the CDC's prerogative to decide when to initiate a proceeding. Nevertheless, this illuminates why BODA hears so few revocation cases each year.

BODA surmises that the CDC's policy was developed in recognition of BODA's limitations under Texas Rule of Disciplinary Procedure 2.22. Rule 2.22 affords BODA absolutely no discretion: the Board *must* revoke probation upon proof of any violation of the terms of probation. And the sanction *must* be full active suspension for the entirety of the suspension term, with the respondent receiving no credit for any probationary time served. Probated suspension is often geared toward rehabilitation and supporting the future success of the respondent attorney. Rule 2.22's lack of discretion for BODA to vary the revocation sanction may work against the ultimate goals of restitution, rehabilitation, and practice of law in compliance with the professional conduct rules.

A future amendment to Rule 2.22 to give BODA greater flexibility in the revocation of probation, including the ability to take action less drastic than an automatic revocation for the full term of suspension, could facilitate more effective enforcement of terms of probated suspension and aid in ensuring the collection of outstanding restitution. BODA would support such an amendment.

BODA will continue to track the number of evidentiary appeals filed and decided, as reported every year in our annual report. Regardless of any trends that may emerge as to that number, BODA

agrees with the Committee that the expertise and experience of our members should be utilized to the fullest extent possible. Should BODA's jurisdiction or powers be expanded in any way, our board members will be ready to fulfill their new duties.

Although the Committee's recommendation against a new requirement that the grievance form be sworn under penalty of perjury does not implicate BODA directly, BODA is interested in this issue. Our board members and staff attorneys review about 1,500 dismissed grievances every year, and panels meet weekly to discuss appeals of dismissed grievances. BODA shares the Committee's concerns about preserving the integrity of the attorney disciplinary system and maintaining the public's access to the grievance process. Based on our extensive experience considering grievance filings, BODA agrees with the CDC that few grievances appear to be false or frivolous; rather, grievances generally express a genuine dissatisfaction with the conduct of the respondent attorney. The overwhelming majority of the dismissed grievances reviewed by BODA are affirmed not because they appear to be disingenuous, but because the conduct raised therein does not state a claim for professional misconduct, or is otherwise not cognizable under the applicable rules. BODA has no reason to believe that adding another attestation requirement would reduce the number of false or frivolous grievances filed, or that such a requirement would further the shared goals of efficiently evaluating grievances, ensuring effective self-regulation as to standards of professional conduct, and protecting the public from those attorneys who violate the public trust by committing professional misconduct.

BODA actively supports efforts to educate the bar, participants in the grievance system, and the public about professional ethics and the attorney disciplinary system. While the Committee's recommendations involving grievance committee training and introducing law school students to the disciplinary system do not relate directly to BODA, BODA would be willing to assist in any such efforts. In addition, BODA is eager to explore opportunities for the entities working in the disciplinary system to communicate about coordination and improvement of our respective roles, and ways we might jointly deal with substantive and procedural issues.

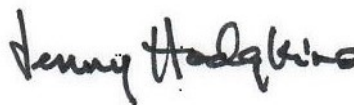
BODA commends the Committee and the Supreme Court for continuing this important work to encourage a collaborative effort among the State Bar, the CDC, the Commission for Lawyer Discipline, the district grievance committees, and BODA to refine and improve the disciplinary system.

Please do not hesitate to contact either of us if you would like to discuss this further.

Sincerely,



David González
Chair



Jenny Hodgkins
Executive Director & General Counsel

xc: Justice Debra Lehrmann, Supreme Court of Texas
Nina Hess Hsu, Supreme Court of Texas
David Kitner, Grievance Oversight Committee
Seana Willing, Chief Disciplinary Counsel
Gena Bunn, Commission for Lawyer Discipline
Brad Johnson, Disciplinary Rules and Referenda Attorney
Wendy-Adele Humphrey, State Bar of Texas Board of Directors
Kelli Hinson, BODA Vice Chair