



STATE BAR *of* TEXAS  
COMMISSION FOR LAWYER DISCIPLINE  
— ANNUAL REPORT —

June 1, 2018 – May 31, 2019

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# *The Lawyer's Oath*

“I do solemnly swear that I will support  
the Constitutions of the United States,  
and of this State; that I will honestly demean myself  
in the practice of law; that I will discharge my duties  
to my clients to the best of my ability;  
and, that I will conduct myself with integrity  
and civility in dealing and communicating  
with the court and all parties.  
So help me God.”

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# FROM THE CHAIR OF THE COMMISSION FOR LAWYER DISCIPLINE

August 31, 2019

On behalf of the Commission for Lawyer Discipline, the information contained in this report is submitted on the attorney disciplinary system for the State of Texas for the period of June 1, 2018, through May 31, 2019. Some of the highlights from the past year are:



- The Commission successfully resolved 589 complaints through the imposition of 414 sanctions and collected \$430,598 in attorneys' fees;
- The Commission continued its efforts to combat professional misconduct in the area of immigration. The Office of Chief Disciplinary Counsel, or CDC, resolved 16 immigration-related complaints through the imposition of four sanctions, including a resignation in lieu of discipline; a suspension; a public reprimand; and a private reprimand;
- This past year, 49 barratry-related grievances were filed. As a result, in resolving 19 of those grievances, CDC obtained three private reprimands, one public reprimand, three suspensions, one resignation in lieu of discipline, and one disbarment. Some of the suspensions involved more than one grievance. As of the end of the fiscal year, 15 grievances remained pending;
- CDC assisted the Client Security Fund Subcommittee in reviewing 178 applications and approving more than \$664,000 in grants;
- CDC began implementing the use of investigatory hearings, pursuant to the changes to the Texas Rules of Disciplinary Procedure effective June 1, 2018. CDC held 160 investigatory hearings in 2018-2019; and
- CDC expanded its efforts to assist and educate the profession and protect the public regarding the cessation of lawyers' practices.

The volunteer members of the Commission continued to strive to protect the public and to ensure the disciplinary process is as fair and as consistent as possible. It is an honor to serve with them.

A handwritten signature in black ink, which appears to read "Noelle Reed".

Noelle Reed  
Chair of the Commission for Lawyer Discipline

## COMMISSION FOR LAWYER DISCIPLINE

The Commission for Lawyer Discipline is a standing committee of the State Bar of Texas and serves as the client in the Texas attorney discipline system. The Commission provides oversight to the Office of Chief Disciplinary Counsel, which administers the attorney discipline system. The Commission works closely with the State Bar Board of Directors and makes quarterly reports to the board on the administrative functions of the Commission as well as important issues within the grievance process. Professional responsibility and public protection are priorities of the State Bar of Texas, and oversight, funding, and support of the disciplinary system is in the best interest of all Texas attorneys as they provide ethical representation to their clients. State Bar directors play a critical role in the discipline system as they recommend both lawyers and non-lawyers to the State Bar president for appointment to local grievance committees. The Commission is composed of 12 members: six attorneys appointed by the president of the State Bar and six public members appointed by the Texas Supreme Court.

### ATTORNEY MEMBERS



**Noelle M. Reed**, chair, heads the Houston litigation practice for Skadden, Arps, Slate, Meagher & Flom. She has extensive experience representing clients in complex litigation in state and federal trial and appellate courts and arbitrations. She obtained her B.A. from Boston University in 1991 and her law degree from Harvard Law School in 1996.



**Bruce Ashworth**, vice chair, is a solo practitioner in Arlington, where his practice focuses on criminal and personal injury law. He is certified in criminal law by the Texas Board of Legal Specialization. Ashworth previously served as a local grievance committee member and as president of the Tarrant County Bar Association and the Arlington Bar Association. He earned his law degree from Texas Southern University Thurgood Marshall School of Law in 1982.



**Gena Bunn** is a solo practitioner in Longview, where she practices criminal defense with a particular emphasis on criminal appeals. She previously served as chief of the Capital Litigation Division and the Postconviction Litigation Division at the Attorney General's Office in Austin, representing the state in federal court appeals of state court convictions. Bunn argued numerous federal habeas corpus cases in the U. S. Supreme Court and the 5th U.S. Circuit Court of Appeals in New Orleans. She graduated from the University of Texas with a Bachelor of Journalism and received her law degree from Baylor Law School.



**Magali Suarez Candler** is certified in immigration and nationality law by the Texas Board of Legal Specialization and is a member of the American Immigration Lawyers Association, or AILA. She serves on the AILA Executive Office for Immigration Review Liaison Committee, advocating on a national basis. She is a past chair of the Texas Chapter of AILA and previously served as vice chair, treasurer, secretary, asylum office liaison, and liaison for the Houston Executive Office for Immigration Review. She served on the State Bar of Texas Laws Relating to Immigration and Nationality Committee from 1998 to 2003. She also served on the University of Houston Law Foundation Board from 1999 to 2003.

**John Neal** is a graduate of Georgia State University and Cumberland School of Law at Samford University. He began his legal career in the firm of Neal, Neal, Richie and Hill, which emphasized litigation in state and federal court. He served as district attorney of the 90th Judicial District from 1986 to 1996. He was named chief of the criminal prosecutions division in 1996 and served under Attorneys General Dan Morales, John Cornyn, and Greg Abbott. Neal served as chief disciplinary counsel for the State Bar of Texas from 2005 to 2009 and as first assistant district attorney for the Travis County District Attorney's Office. He is certified in criminal law by the Texas Board of Legal Specialization.



**Roberto "Bobby" Ramirez** practices law in McAllen as a member of the Ramirez Law Firm. He is a fifth-generation resident of the Rio Grande Valley. He is certified in personal injury trial law by the Texas Board of Legal Specialization, and he previously served as chairperson for the District 12 Grievance Committee and as a member of the Texas Board of Legal Specialization. Ramirez received his undergraduate degree from the University of Texas at Austin and his J.D. from the University of Texas School of Law.



## **PUBLIC MEMBERS**

**Sheri Roach Brosier** has lived in Amarillo all her life and is married with three children. She is a third-generation rancher, helping operate T.L. Roach & Son Allen Creek Ranch near Clarendon. She loves serving her community and volunteering for various civic organizations. She served on the District 13 Grievance Committee from 2001 to 2007.



**Valery Frank** of San Angelo was appointed to the Commission in 2018. A graduate of Angelo State University, Frank is a registered nurse and worked in critical care before retiring. A longtime advocate of health care, children's issues, education, and the arts, she has served on numerous boards, leading nonprofits and raising money for worthy causes. Prior to her appointment to the Commission, she served on the District 15 Grievance Committee for eight years.



**Vance Goss** works in the commercial real estate business in the Bryan-College Station area with Clark Isenhour Real Estate Services LLC. Previously, he owned and operated Brazos Record Storage, a commercial records management and destruction business. Prior to his appointment to the Commission in 2015, Goss served on the District 8 Grievance Committee.



**William Skrobarczyk** is a partner in the CPA firm of Skrobarczyk & Partridge. Prior to his appointment to the Commission in 2014, he served on the District 11 Grievance Committee from 2008 to 2014. He earned an M.B.A. and a B.A. from Texas A&M University-Corpus Christi.



**Shailendra N. Thomas** was appointed to the Commission in 2018. Her experience in education extends more than 30 years, serving as elementary school teacher, instructional specialist, educational consultant, adjunct college professor, senior administrator/principal at Fellowship Christian Academy, Dallas co-director of the Texas Private Schools Association, and national accreditation commissioner for the Association of Christian Schools International. Thomas received her doctoral degree in educational leadership in 2010 from Oral Roberts University and recently completed her service as head of school of Scofield Christian School. She currently serves as head of school at The King's Academy in Dallas and has co-authored several books that inspire children, women, and educators.



**Javier S. Vera** is a CPA, a U.S.-licensed customs broker, and CFO of Roser & J. Cowen Logistical Services, Ltd., in Brownsville. He began his career working for Grant Thornton International, an international public accounting firm, and was a senior audit manager. He serves as an alderman for the town of Rancho Viejo. He has also served on various boards, nonprofits, and civic organizations. Prior to his appointment to the Commission in 2015, Vera served on the District 12 Grievance Committee from 2010 to 2015. Vera graduated from the University of Texas at Austin with a B.B.A. in accounting in 1982.



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***Ethics Helpline — 800-532-3947***

*The Ethics Helpline returned approximately 6,000 phone calls from Texas lawyers seeking advice regarding conflicts, confidentiality, safekeeping property, termination of representation, candor to the tribunal and fairness in adjudicatory proceedings, communicating with represented persons, fee-splitting or engaging in business with non-lawyers, advertising and solicitation, and the duty to report misconduct.*

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# 2018-2019 HIGHLIGHTS

## CHANGES IN LEADERSHIP



In January 2019, Linda Acevedo retired as chief disciplinary counsel, a position that she held since 2009. Acevedo was employed by the State Bar of Texas for 33 years, beginning as a trial attorney. She was promoted to appellate counsel in 1992 and to first assistant disciplinary counsel in

2005. During her time at the State Bar, Acevedo was instrumental in fulfilling the mission of the disciplinary program, by protecting the public and working to ensure the disciplinary rules were applied fairly.



In March 2019, Seana Willing began serving as the new chief disciplinary counsel. Willing served the State Commission on Judicial Conduct for 18 years — 14 of those as executive director of the commission. Immediately prior to coming on as chief disciplinary counsel, Willing served as

executive director of the Texas Ethics Commission for two years. Willing was recognized by the Texas Center for the Judiciary with the “Exemplary Non-Judicial Faculty Award” in 2016. Willing received her J.D. in 1993 from St. Mary’s University School of Law.

Also retiring in the 2018-2019 bar year was Laura Popps, who served as regional counsel for Austin and deputy counsel for administration. Popps had been with the bar since 2009, and she was awarded the Presidential Citation from the bar in 2014 for her work in handling disciplinary matters involving prosecutorial misconduct.



In April 2019, Royce LeMoine was brought on as the new head of the Austin regional office and deputy counsel for administration. LeMoine previously served as deputy director at the State Commission on Judicial Conduct. Prior to joining the Commission on Judicial Conduct in 2012, LeMoine served as a hearing officer for the Texas Workforce Commission and was in private practice for 11 years.



## INVESTIGATORY HEARINGS

During 2018-2019, CDC began implementing the use of investigatory hearings, as required in the June 2018 rules changes to the Texas Rules of Disciplinary Procedure. Under the new provision, CDC may hold an investigatory hearing before a local grievance panel to determine whether there is just cause to proceed with a disciplinary matter. These are designed to enable CDC to more quickly resolve disciplinary matters by allowing evidence and testimony to be produced well before the discovery phase in litigation. The hearings allow complainants an opportunity to be heard before an investigatory hearing panel reaches a decision on their grievance. They are designed to be nonadversarial and may be conducted by teleconference.



An investigatory hearing may result in an agreed judgment with the respondent attorney or in CDC dismissing the complaint or finding just cause to proceed. In 2018-2019, CDC held 160 investigatory hearings, resolving 167 grievances.

## **CONTINUED SUCCESS OF THE CENTRALIZED COORDINATION OF CESSATIONS OF PRACTICE**

CDC Appellate/Special Projects Counsel Dean Schaffer recently was awarded the Presidential Citation from Joe K. Longley for his work on a centralized cessations docket pilot program. Under this program, all inquiries from attorneys, judges, families, and members of the public regarding possibly abandoned law practices are forwarded to Schaffer. Schaffer investigates to determine whether the subject attorney is deceased, ill, or otherwise in need of assistance in closing down a law practice. He then works with volunteer local attorneys — often colleagues or friends of the subject attorney — to determine what steps need to be taken to protect the clients of the subject attorney. This can range from a simple phone call to seeking court-ordered custodianship of the law practice.

### **Regulation of Cessations Under the Texas Rules of Disciplinary Procedure**

Texas Rule of Disciplinary Procedure Part 13 regulates cessation of practice. Most cessations do not involve court action. Instead, they go through the notice procedure set forth in Rule 13.01.

In some instances, cessation of a lawyer's practice can be especially problematic, such as a situation in which a solo practitioner overwhelmed with a heavy docket suddenly dies in a car accident. The cessation of practice is unexpected, sudden, and permanent; the aftermath can be chaotic.

Problematic cessations sometimes point to court action under TRDP 13.02 and 13.03. Under 13.02, an applicant files a verified petition with a qualifying court, requesting that the court assume jurisdiction over the lawyer's practice. If the court agrees, it issues an order under 13.03, bringing about custodianship of the law practice. Under Rule 13, neither the court nor the custodians "assume" the law practice. The court assumes jurisdiction and appoints custodian-attorneys for the limited purpose of custodianship.

On the other hand, "assumption" or "cessation/assumption" — as an event — can be a fit for succession planning. For example, two solos (and their clients) might agree that — if one of the lawyers dies, the other becomes the successor attorney to "assume handling of client matters." Custodianship is different. One way to think of it is that the lawyer who "assumes" a law practice is proceeding as the clients' new lawyer, whereas the custodian is "bringing to rest" the absent lawyer's law practice.

### **Aging Lawyer Population**

As the lawyer population — along with the population in general — continues to age, this issue will become more prominent. As of the end of the 2018-2019 bar year, Schaffer had investigated approximately 330 law practices, with 186 of those involving deceased lawyers.

In May, Schaffer spoke at the ABA's National Forum on Client Protection on this issue, where many jurisdictions reported similar concerns with regards to the unexpected cessation of law practices. Many participants indicated they would consider implementing programs similar to Schaffer's pilot program.

The bar's Client Security Fund is also affected by the aging of the attorney population. The fund — along with every other client protection fund in North America — is experiencing an increase in the number of applications it receives pertaining to deceased attorneys. In almost every case, the attorney died leaving little to nothing left in his or her trust account, despite the fact that the attorney had not earned all of the client's fees. This indicates that these attorneys were most likely drawing on unearned fees to pay other bills, with the expectation that they would eventually perform the work. However, when they die unexpectedly, their clients are often left unable to recover their files, unearned fees, or other property, and unable to resolve the legal issues for which the now-deceased attorney was hired to handle.

In 2018-2019, the fund subcommittee approved approximately \$150,000 in payments to former clients of deceased attorneys, up from about \$100,000 in 2017-2018. At the May ABA National Forum on Client Protection, other jurisdictions reported similar trends. If this trend continues, Texas will see an increasing portion of its applications filed by former clients of deceased attorneys and an increasing portion of the fund approvals going to those applicants. Although the fund tries to collect from the deceased attorneys' estates, in almost every situation, the estate is insolvent.



*Dean Schaffer speaks at the ABA's National Forum on Client Protection.*

## **PROTECTING THE PUBLIC 2018-2019 SNAPSHOT**

**Total Disciplinary Sanctions 414**

**\*Total Complaints Resolved 589**

**Disbarments 14**

**Resignations in Lieu of Discipline 17**

**Suspensions 152**

**Public Reprimands 32**

**Private Reprimands 124**

**Grievance Referral Program 75**

- \$430,598 in attorneys' fees were collected from respondent attorneys as part of a sanction
  - \$664,143.78 in funds were approved for victims of attorney misconduct by the State Bar of Texas Client Security Fund, with 178 applications reviewed by the subcommittee
  - Approximately 6,000 phone calls were returned by the State Bar of Texas Ethics Helpline
  - The State Bar Client-Attorney Assistance Program resolved 1,126 matters
  - More than 3,000 lawyer advertisements were reviewed by the State Bar Advertising Review Committee
- \* Each sanction entered may have involved complaints filed by more than one complainant.

### **Compulsory Discipline Process Explained**

In recent years, CDC has seen several high-profile disciplinary matters involving compulsory discipline. In an effort to explain how the process works, CDC developed a summary, which also includes information on the interim suspension process.

Part VIII of the Texas Rules of Disciplinary Procedure allows CDC to seek “compulsory discipline,” which is discipline based on a qualifying criminal conviction. This contrasts with the standard method for proceeding with a disciplinary matter, which requires CDC to prove the underlying misconduct, rather than just rely on the fact of the criminal conviction.

To obtain compulsory discipline, CDC must file a petition with the Board of Disciplinary Appeals showing that the respondent attorney was convicted (or placed on probation) for a qualifying crime. Under the TRDP, that includes barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money; and any attempt, conspiracy, or solicitation to engage in said activity.

After CDC files the petition with BODA, it must serve the respondent attorney and allow him or her 30 days to respond, prior to the hearing on the petition. BODA meets once per quarter, so if CDC has difficulty in serving the respondent attorney, a hearing on the matter can be delayed for several months. If the respondent appeals

## **GENDER AND RACE 2018-2019 SNAPSHOT**

### **Total Disciplinary Sanctions 414**

#### **GENDER:**

**Male Respondents 74%**

**Female Respondents 26%**

#### **RACE:**

**White/Caucasian 53%**

**Hispanic/Latino 19%**

**Black/African American 14%**

**Asian 2%**

**Other/Not Specified 12%**

*The information regarding race and gender is based on information voluntarily provided by bar membership in the attorney profiles maintained by the State Bar of Texas and is therefore not a complete picture of gender and racial statistical information.*

his or her underlying criminal conviction, BODA will enter an interlocutory suspension pending the outcome of the appeal. After the conviction becomes final, CDC will file a motion for final judgment, usually seeking disbarment.

The compulsory discipline process, when available, is a better use of resources than proceeding with a fact-based disciplinary matter, because the record of conviction itself is conclusive evidence of the attorney's guilt. In other words, CDC does not have to invest its limited resources into conducting its own investigation — subpoena witnesses, conduct discovery, etc. — to prove that the respondent attorney engaged in criminal conduct; nor does it risk interfering with an active criminal investigation or impending criminal prosecution.

CDC has the ability, in limited situations, to seek an interim suspension. Under Rule 14.01 of the TRDP, if CDC believes that an attorney poses a “substantial threat of irreparable harm to clients or prospective clients” and CDC is authorized to do so by the Commission for Lawyer Discipline, CDC can file a petition with the district court requesting that the attorney be suspended pending the outcome of the disciplinary matter.

After CDC files the petition, the court will set a hearing within 10 days. At that hearing, CDC has the burden to prove the need for an interim suspension by a preponderance of the evidence. This is done by presenting evidence, such as testimony from witnesses.

There are several reasons why CDC might not proceed with an interim suspension while a compulsory disciplinary matter is pending. One of the main reasons is that the compulsory discipline process, by definition, involves a pending criminal matter. Often, law enforcement will ask CDC to refrain from doing the things that are necessary to proceed with an interim suspension, such as subpoenaing witnesses to testify under oath at the hearing. For obvious reasons, it is common for the prosecution to not want their witnesses put under oath before the criminal trial. CDC has a cooperative relationship with law enforcement and will defer to law enforcement and not take actions that may weaken or interfere with a criminal investigation or prosecution.

Interim suspensions are not easy to obtain. In an interim suspension action, the local judge is being asked to suspend a lawyer's law license before there has been a final adjudication of the underlying disciplinary matter or a criminal trial. Once an interim suspension action is filed, the rules require the case to go to trial within 10 days. CDC is required to prove the elements of a serious crime or three or more acts of professional misconduct and that the attorney poses a threat of harm to clients or prospective clients.

Due to the strict confidentiality statute in place (Rule 2.16 of the TRDP), CDC is often prohibited from discussing pending cases or even acknowledging the existence of specific matters. However, CDC staff is available to discuss its procedures in general. Questions about CDC procedure or the implementation of the Texas Rules of Disciplinary Procedure may be directed to CDC's public affairs counsel, Claire Reynolds, at [creynolds@texasbar.com](mailto:creynolds@texasbar.com) or 512-427-1354.



*Commission for Lawyer Discipline members Vance Goss, Noelle Reed, Bruce Ashworth, and John Neal.*

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## ***Recognizing Volunteers***

*Currently, 349 Texans serve on local  
grievance committees.*

*Two-thirds are lawyers.*

*One-third are public members.*

*Collectively, they volunteer thousands of hours  
each year to protect the public.*

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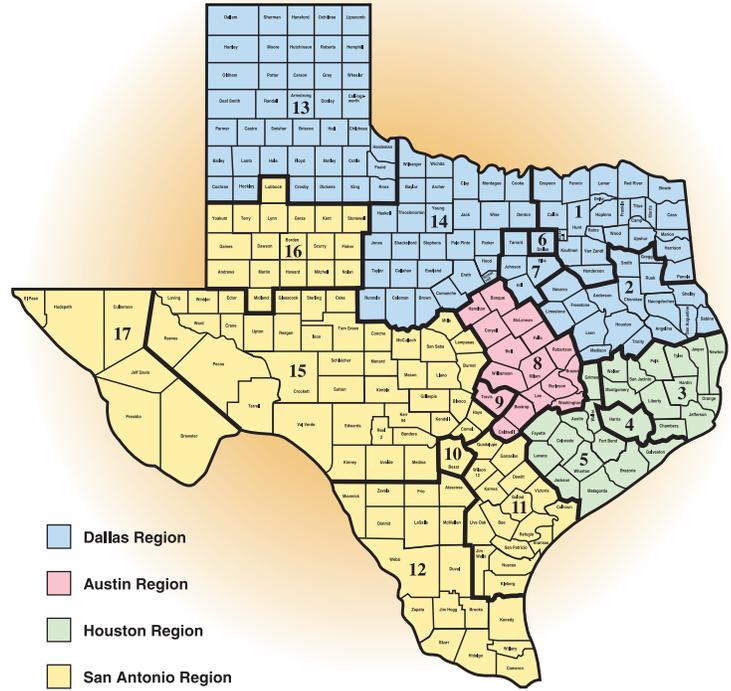
# OFFICE OF CHIEF DISCIPLINARY COUNSEL

The Texas attorney discipline system is administered by the Office of Chief Disciplinary Counsel, which is designed to be the “bar’s law office,” and whose work is overseen by the Commission for Lawyer Discipline. CDC represents the Commission in disciplinary litigation. Professionalism 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. In recognition of this close connection, emphasis is placed on the quality of disciplinary prosecutions, identification of disability or impairment problems, solutions for attorneys in need of law practice management or other basic skills, and innovative ways to maintain open communication between the public and the bar.

## STAFFING AND TRAINING

The Office of Chief Disciplinary Counsel operates the discipline system with 96 full-time employees, including 37 lawyers, 12 investigators, 33 legal support staff members, 10 administrative support staff members, and four administrative managers. CDC also has an additional half-time lawyer.

In addition to its headquarters in Austin, CDC has regional offices in San Antonio, Dallas, and Houston. Each regional office is responsible for the investigation and prosecution of disciplinary matters within its region and is managed by a regional counsel. CDC provides two comprehensive in-house orientation programs for all newly hired employees statewide — one for lawyers and one for non-lawyer staff. The orientation is held on the employee’s first day of work and provides an overview of the core functions of the organization as a whole, as well as a detailed review of the work of CDC.



## ATTORNEY ETHICS HELPLINE

CDC maintains, as a service to the members of the bar, a toll-free Attorney Ethics Helpline, operated from 8 a.m. to 5 p.m. Monday through Friday.

The helpline is designed to assist Texas attorneys who have questions about their ethical obligations to clients, courts, and the public under the Texas Disciplinary Rules of Professional Conduct. The service is designed to give attorneys access to rules, ethics opinions, and caselaw so that an attorney can make an informed decision about an ethics issue.



Royce LeMoine, Deputy Counsel for Administration; Tonya Harlan, Dallas Regional Counsel; Seana Willing, Chief Disciplinary Counsel; Bill Moore, Houston Regional Counsel; and James Ehler, Deputy Counsel for Litigation.

The information provided is informal and not binding on any District Grievance Committee or court. Pursuant to the policy of the State Bar Board of Directors, the chief disciplinary counsel and her staff are not permitted to issue written opinions nor may they provide legal advice.

The Attorney Ethics Helpline does not provide legal assistance to the general public and cannot address questions concerning pending grievances.

During the 2018-2019 bar year, two full-time and one half-time ethics attorneys — with assistance from CDC’s special projects counsel — returned approximately 6,000 calls to the Ethics Helpline. These calls ranged from simple inquiries to complex ethical questions that involved hours of research and discussion. The most commonly asked questions relate to conflicts of interest, confidentiality, safekeeping property, termination of representation, candor to the tribunal and fairness in adjudicatory proceedings, communicating with represented persons, fee-splitting or engaging in business with non-lawyers, advertising and solicitation, and the duty to report misconduct.

The ethics helpline attorneys strive to provide superior customer service. In 2018-2019, 85% of calls were returned within one day or less and 93% of calls were returned within two days or less.

**THE ATTORNEY ETHICS HELPLINE NUMBER IS 800-532-3947.**

### **STATEWIDE COMPLIANCE MONITOR AND GRIEVANCE REFERRAL PROGRAM**

Disciplinary judgments often require that respondents refund all or part of the attorneys’ fees paid to them by clients harmed by misconduct and pay the Commission for the attorneys’ fees and costs incurred in prosecuting the disciplinary action. Terms of license suspension may also contain requirements directed toward changing lawyer behavior, for example, completing additional continuing legal education in the area of law practice management, assigning of a law practice monitor, auditing of the lawyer’s trust account, or participating in treatment programs for mental health or substance use disorders. This results in frequent referrals to other bar programs such as TexasBarCLE and the Texas Lawyers’ Assistance Program.

The statewide compliance monitor, Heather White, is housed in the Austin office, which enables her to manage the compliance caseload in a centralized and more consistent manner. In 2018-2019, the compliance department had 338 active cases and resolved 248 cases.

Michelle Fontenot is the Grievance Referral Program administrator for cases involving rehabilitative terms of suspension. In the 2018-2019 bar year, 75 attorneys successfully completed the program. As a matter of office policy, immediate payment of restitution is required in most cases involving agreed disciplinary judgments. An additional \$171,261 in restitution was collected in the 2018-2019 bar year in cases involving agreed judgments,

**MEDIA INQUIRIES REGARDING  
THE DISCIPLINARY SYSTEM  
SHOULD BE DIRECTED TO:**

**Claire Reynolds  
Public Affairs Counsel  
Office of Chief Disciplinary Counsel  
512-427-1354  
creynolds@texasbar.com**

non-agreed judgments, respondent defaults, and reinstatements. The centralized compliance process contributed to the collection of \$430,598 in attorneys’ fees for 2018-2019.

Due to the implementation of investigatory hearings, the compliance department has experienced an influx of respondents being referred to the program, with the average active docket increasing to 50 from 25-30 cases. With the increased capacity has come new focus areas, including reading assignments focusing on dealing with stress, improving time management, overcoming anxiety, processing the aftermath of domestic abuse, and finding resilience in attorneys’ professional and personal lives; as well as new assignments focusing on time management and how best to make use of paralegals. Additionally, the team of Fontenot and Linzy Hill are creating a survey for respondents to complete at the end of their participation, in an effort to obtain more feedback on resources and to see what was most helpful in the program.

**CLIENT SECURITY FUND**

Every state in the U.S. and province in Canada has some form of client protection fund. Texas’ fund is called the Client Security Fund and holds more than \$2 million in its corpus. Payouts are funded through an annual appropriation from the bar, interest on the corpus, and any restitution received.

Unless the lawyer is already disbarred, resigned in lieu of discipline, or deceased, eligible applicants must file a grievance that results in findings that the lawyer stole the client’s money or failed to refund an unearned fee. Applicants must present proof of their losses and meet the statute of limitations for the fund, which is 18 months following the date of the disciplinary judgment. Applications to the fund are reviewed and acted upon by the Client Security Fund Subcommittee, a standing subcommittee of the State Bar Board of Directors. CDC, through Claire Reynolds, serves as the administrator and legal counsel to the fund.

Reynolds is responsible for conducting investigations on applications and presenting recommendations to the subcommittee. In the 2018-2019 bar year, Reynolds presented 178 applications to the subcommittee. Of the 178 reviewed, 115 were approved, resulting in grants totaling \$664,143.78. This was down from the \$901,718.68 granted last year, as the applications tended to seek mostly lower dollar amounts, most commonly related to immigration law. Specifically, 15 applications related to criminal law; one to employment law; nine to estate, wills, and probate law; 20 to family law; 43 to immigration law; 12 to personal injury; two to real estate; and 13 classified as “other.” Of the amount approved for grants, \$279,386.26 was the result of attorney theft of settlement funds and \$384,757.52 was the result of attorneys failing to refund unearned fees. The category of “failing to refund unearned fees” includes deceased attorneys.

<b>Time Period</b>	<b>Applications Presented</b>	<b>Applications Approved</b>	<b>Total Grants Approved</b>
2018-2019	178	115	\$664,143.78
2017-2018	222	148	\$901,718.68
2016-2017	157	113	\$976,114.94
2015-2016	171	115	\$814,616.72
2014-2015	138	102	\$639,581.09
2013-2014	134	118	\$1,232,355.00

*“I think I may get all the young attorneys I manage to come together and watch the video in our large conference room. It contains extremely helpful pointers, and they can take some crucial information from that video.” — GRP Participant*

## **BARRATRY**

This past bar year, the number of barratry-related grievances filed with CDC increased by more than 50%. Of the 49 grievances filed, CDC obtained the following disciplinary sanctions in 19 of those cases: three private reprimands, one public reprimand, three suspensions, one resignation in lieu of discipline, and one disbarment. Some of the suspensions involved more than one grievance. As of the end of the fiscal year, 15 grievances relating to barratry remained pending.

CDC continues to look for ways to partner with State Bar leadership, local bar associations, prosecutors, and members of law enforcement to combat and educate the public and the profession about the problem of barratry and improper solicitation. CDC continues to pursue a targeted public information campaign designed to educate victims and their families about the dangers of barratrous behavior by unscrupulous attorneys, health care professionals, funeral homes, towing companies, roofers, insurance adjusters, and others with whom they may come into contact in the aftermath of an accident or mass disaster. At intake, CDC identifies and tracks all complaints that allege barratry-related behavior or where the complainant has indicated on the grievance form that the attorney that is the subject of the complaint improperly solicited his or her case. These and other outreach and enforcement efforts will continue to be a focus of CDC.

CDC also continues to work with local law enforcement, district attorneys, the Attorney General’s Consumer Protection Division, Texas Rangers, the FBI, the U.S. Department of Justice, the IRS, the U.S. Citizenship and Immigration Services, and the National Insurance Crime Bureau on barratry-related investigations, as disciplinary and other investigations of barratry often overlap. Two consistent difficulties faced by CDC in investigating barratry-related grievances are



*CDC staff assisting with a mock investigatory hearing for District 8.*



*District 8 Chair Natalie Koehler administering the oath to reappointed and new members.*

the need to rely on co-conspirator testimony and the fact that monies paid for the soliciting of clients are often made in cash and cannot be tracked. However, CDC coordination and cooperation with criminal barratry prosecutions has proven fruitful in those rare instances where the crime has been prosecuted. Likewise, the grievance process remains available to members of the profession who are pursuing civil remedies for improper solicitation under Chapter 82 of the Government Code.

## DISTRICT GRIEVANCE COMMITTEES

Texas is proud of its tradition of utilizing local volunteers to serve on grievance committees. The commitment of the district grievance committee members is vital to the success and effectiveness of the attorney discipline system. Currently, 349 volunteer grievance committee members serve on 17 committees throughout the state. Members are nominated by State Bar directors and appointed by the State Bar president.

The district grievance committees are composed of two-thirds lawyer members and one-third public members, each of whom serve a three-year staggered term and are eligible to serve two consecutive terms. Public members may not have, other than as consumers, a financial interest, direct or indirect, in the practice of law. Lawyer members must be licensed and in good standing in the state of Texas.

### ROLE OF GRIEVANCE COMMITTEES

The district grievance committees perform two critical roles in the discipline system: (1) review complaints presented by CDC and determine whether the case should be dismissed or proceed to prosecution; and (2) sit as an administrative tribunal to determine whether professional misconduct was committed and assess an appropriate sanction.

### LOCAL TRAINING

Local training of each district grievance committee is conducted annually throughout the state. This MCLE-approved training is conducted by regional counsel and their staff. Emphasis is placed upon the procedural and substantive rules governing the attorney discipline system, duties and authority of the grievance committees, and the importance of attendance and participation at scheduled hearings. In addition to these efforts, CDC has developed and produced several online training sessions addressing evidentiary hearings, common rule violations, issues



*District 9 Chair Ryan Botkin administering the oath to reappointed and new members.*



*District 8 members taking the oath.*



*District 9 members taking the oath.*

related to the imposition of sanctions, attorneys' fees, and a grievance symposium that addressed a variety of issues related to the discipline process. The sessions were designed to provide grievance committee members with a more in-depth analysis of key issues in disciplinary cases in order to facilitate their work on the grievance committees. Additionally, the State Bar offers free continuing legal education courses for members of the grievance committees.

The Dallas Regional Office conducted eight annual training sessions; the San Antonio Regional Office conducted 11 annual training sessions; the Houston Regional Office conducted three annual training sessions; and the Austin Regional Office conducted two annual training sessions.

### **DIVERSITY OF GRIEVANCE COMMITTEE MEMBERS**

Acknowledging the importance to the public and the lawyers of Texas for the members of the district grievance committees to fairly represent the racial, ethnic, and gender makeup of the districts they serve, the State Bar directors work with CDC to make appointments that maintain this diversity in membership, including the goal that lawyer members reflect various practice areas and law firm size. The most common areas of practice by committee membership are general practice, criminal law, family law, personal injury law, and probate law, which are also the most common types of law related to filed grievances.

#### **2018-2019 DIVERSITY SURVEY OF GRIEVANCE COMMITTEE MEMBERSHIP COMPARED WITH STATE BAR MEMBERSHIP**

<b>Gender</b>	<b>Committee</b>	<b>Attorney Committee Membership</b>	<b>SBOT Membership</b>
Male	62%	64%	64%
Female	38%	36%	36%

<b>Ethnicity</b>	<b>Committee</b>	<b>Attorney Committee Membership</b>	<b>SBOT Membership</b>
White	69%	75%	79%
Asian/Pacific Islander	0%	0%	4%
African-American	6%	3%	6%
American Indian/Alaska Native	1%	1%	<1%
Hispanic/Latino	13%	17%	10%
Other	11%	4%	1%

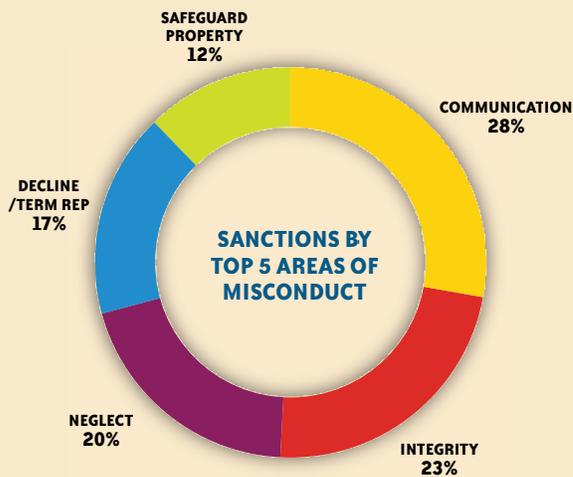
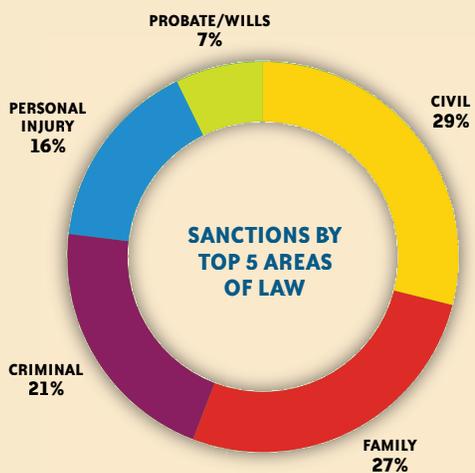
# OVERVIEW OF THE ATTORNEY DISCIPLINE PROCESS

The State Bar of Texas is dedicated to improving and advancing the quality of legal services to the public, protecting the public through the discipline system, and fostering integrity and ethical conduct in the legal profession.

The Texas attorney discipline system is governed by the Texas Disciplinary Rules of Professional Conduct (ethics rules) and the Texas Rules of Disciplinary Procedure (procedural rules). The ethics rules define proper conduct for purposes of professional discipline. The procedural rules provide the mechanism by which grievances are processed, investigated, and prosecuted.

The Texas Rules of Disciplinary Procedure and Texas Disciplinary Rules of Professional Conduct are available at [texasbar.com/ethics](http://texasbar.com/ethics).

## STATISTICAL DATA



## **GRIEVANCE PROCEDURE**

Those who believe they have been a witness to attorney misconduct — clients, members of the public, members of the legal community, and judges — have the right to file a grievance against a Texas attorney. The grievance form is available on the State Bar website (in Spanish and English), in each of CDC’s regional offices, through the State Bar Client-Attorney Assistance Program, and at courthouses, law libraries, legal aid organizations, and local bar associations across the state. In addition, complainants can now file grievances directly online via the State Bar website. A video with detailed instructions on how to file a grievance can be found on the bar website under “For the Public — Watch How to File a Grievance.”

### **CLASSIFICATION**

The filing of a written grievance with any one of CDC’s regional offices initiates the disciplinary process. Lawyers are subject to discipline only if they have violated the ethics rules (Texas Disciplinary Rules of Professional Conduct). Upon receipt of the grievance, CDC determines whether the grievance, on its face, alleges professional misconduct. This determination is referred to as classification of the grievance and is made within 30 days of the filing of the grievance. During the 2018-2019 bar year, 8,015 grievances were filed.

If the grievance does not allege professional misconduct, it is classified as an inquiry and dismissed or, upon the discretion of CDC, referred to the Client-Attorney Assistance Program, where CAAP will attempt to resolve minor issues. During 2018-2019, CDC referred 322 matters to CAAP for resolution.

Within 60 days, CAAP will notify CDC of the outcome of the referral. CDC must, within 15 days of notification from CAAP, determine whether the grievance should be dismissed as an inquiry or proceed as a complaint.

If the grievance alleges professional misconduct, it is classified as a complaint and sent to the respondent lawyer for a response.

### **WHY ARE GRIEVANCES DISMISSED?**

Of the grievances considered between June 1, 2018, and May 31, 2019, 5,561 were dismissed as inquiries. Grievances are dismissed for various reasons, including the following:

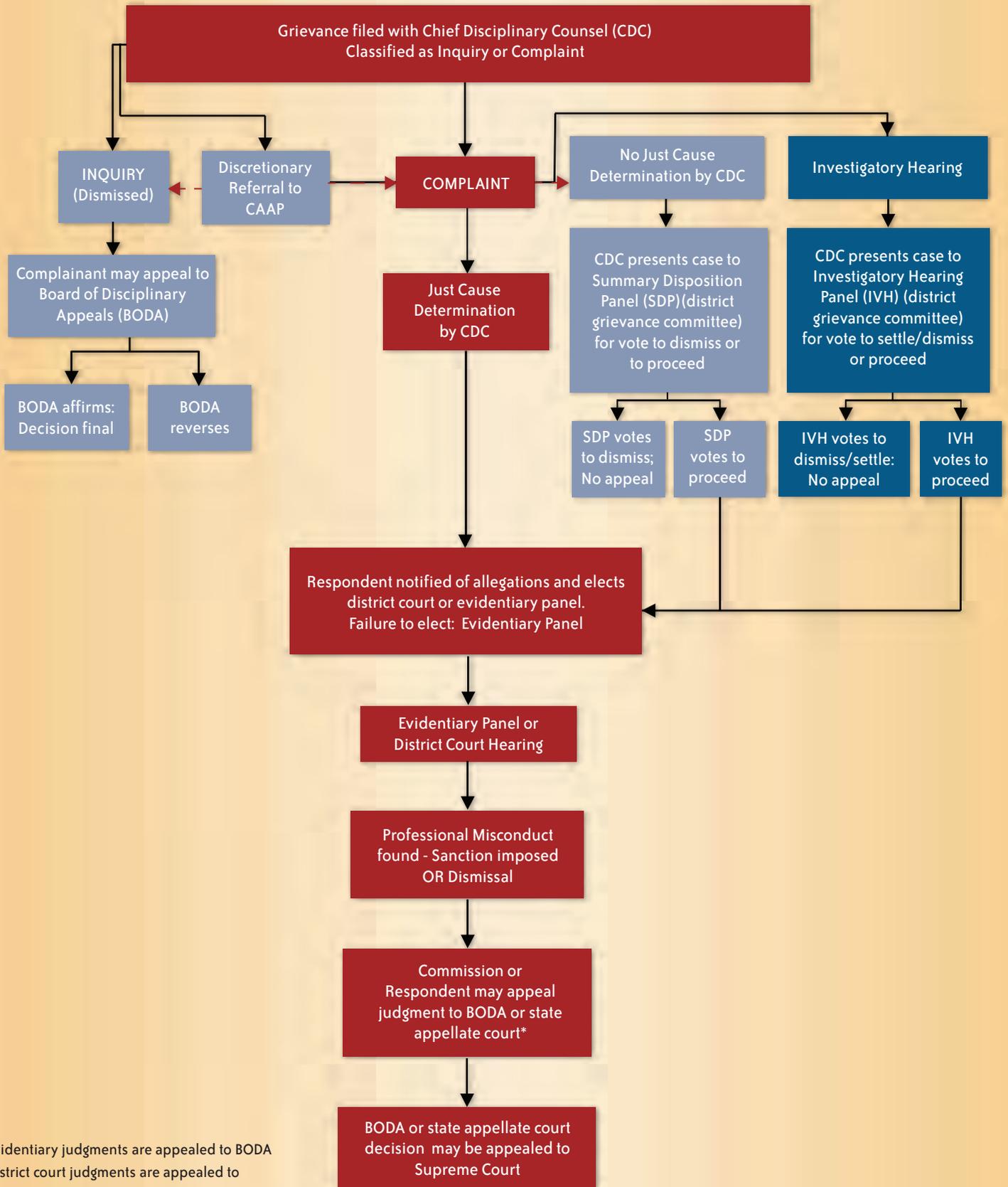
- The grievance concerns the outcome of a case but does not specify a violation of an ethics rule.
- The grievance does not involve a lawyer’s conduct in his or her professional capacity.
- The grievance is filed too late.
- The grievance is duplicative or identical to a previous filing.
- The grievance concerns a lawyer who has been disbarred, has resigned, or is deceased.
- The grievance concerns a person who is not licensed as an attorney (handled by the Unauthorized Practice of Law Committee).
- The grievance is filed against a sitting judge (handled by the State Commission on Judicial Conduct).

### **CHECK IN THE SYSTEM — AN APPEALS PROCESS**

The person who filed the grievance has the right to appeal CDC’s classification decision to dismiss the grievance as an inquiry to the Board of Disciplinary Appeals. BODA is an independent 12-attorney tribunal, appointed by the Texas Supreme Court.

During the 2018-2019 bar year, there were 1,514 appeals by complainants from classification decisions. Of the 1,514 appeals, BODA reversed 120 classification decisions, resulting in an overall reversal rate of 7.93%. When BODA reverses a classification decision, the grievance is sent back to CDC and is processed as a complaint.

## — PROCESSING A GRIEVANCE —



\*Evidentiary judgments are appealed to BODA  
 District court judgments are appealed to state appellate court

## COMPLAINT STATISTICS

During the 2018-2019 bar year, 2,315 of the grievances filed were classified as complaints. A majority of these complaints involved the areas of criminal law, family law, and personal injury. Among the most common allegations were neglect, failure to communicate, and complaints about the termination or withdrawal of representation.

## INVESTIGATION AND DETERMINATION OF JUST CAUSE

Once the grievance is classified as a complaint, it is sent to the respondent lawyer, who has 30 days from receipt to respond. Within 60 days of the response deadline, CDC, through its investigation, must determine whether there is just cause to believe that professional misconduct occurred. If CDC decides to proceed with an investigatory subpoena or hearing, that deadline is extended to 60 days after completion of the hearing or the date of compliance in the subpoena.

Investigatory hearings are designed to be nonadversarial in nature and to assist in resolving grievances earlier in the process. Investigations may include the following:

- Requests for additional information from the complainant
- Information from corroborative witnesses
- Receipts
- Hourly records or billing statements
- Correspondence to and from client
- Message slips, telephone logs, or records of long distance telephone calls and emails
- Court records, such as pleadings, motions, orders, and docket sheets
- Copies of settlement checks and/or disbursement statements
- IOLTA or trust account records, such as monthly bank statements, deposit slips, deposit items, and disbursement items
- State Bar Membership Department records, including records of current or past administrative suspensions
- Client file
- Witness interviews and sworn statements



*James Ehler conducting grievance committee training.*

Investigatory hearings may result in a negotiated sanction, a dismissal of the complaint, or a finding of just cause.

## NO JUST CAUSE FINDING

If CDC determines that there is no just cause to proceed on the complaint, the case is presented to a Summary Disposition Panel, which is a panel of local grievance committee members composed of two-thirds lawyers and one-third public members. The Summary Disposition Panel is an independent decision maker and has the discretion to either accept or reject CDC's determination.

Information and results regarding CDC's investigation are presented to the panel at a docket hearing without the presence of either the complainant or respondent. If the panel accepts CDC's determination, the complaint will be dismissed. If the panel rejects CDC's determination, the panel votes to proceed on the complaint.

During the 2018-2019 bar year, 1,799 cases were presented to Summary Disposition Panels of local grievance committees for consideration. The panels voted to dismiss in 1,779 of those cases.

## TRIAL OF THE COMPLAINT

If CDC finds just cause or the Summary Disposition Panel votes to proceed on the complaint, the respondent lawyer is given written notice of the allegations and rule violations. The respondent has 20 days to notify CDC whether he or she chooses to have the case heard before an evidentiary panel of the grievance committee or by a district court, with or without a jury. This choice is referred to as the respondent's election. A respondent who fails to elect will have the case tried before an evidentiary panel of the grievance committee.

2018-2019 BAR YEAR		2017-2018 BAR YEAR	
Elected Evidentiary	167	Elected Evidentiary	253
Defaulted into Evidentiary	174	Defaulted into Evidentiary	285
Elected District Court	23	Elected District Court	50

Evidentiary panel hearings are confidential and allow for a private reprimand, the least sanction available, to be imposed. District court proceedings are public and the least sanction available is a public reprimand. In both types of proceedings, the parties are the Commission for Lawyer Discipline represented by CDC and the respondent lawyer. It is the Commission's burden to prove the allegations of professional misconduct by a preponderance of the evidence.

If no professional misconduct is found, the case is dismissed. If professional misconduct is found, a separate hearing may be held to determine the appropriate discipline. In evidentiary panel proceedings, the panel may also find that the respondent suffers from a disability and forwards its finding to the Board of Disciplinary Appeals.

During the 2018-2019 bar year, CDC resolved 589 complaints before grievance committee panels, district courts, and the Board of Disciplinary Appeals and disposed of almost 1,800 cases before Summary Disposition Panels of the local grievance committees.

## GRIEVANCE REFERRAL PROGRAM

Implemented in 2007, the Grievance Referral Program is an important component of the attorney discipline system. It was designed to help identify and assist lawyers who have impairment or performance issues and who enter the disciplinary system as a result of minor misconduct. GRP allows the Commission for Lawyer Discipline to refer to the program lawyers who have engaged in minor misconduct and who otherwise meet the GRP eligibility criteria. In exchange for a dismissal of the underlying complaint by the Commission, the respondent lawyer agrees to complete a program individually tailored to the respondent lawyer's needs. 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.

GRP presents an opportunity for respondent lawyers to address the issues that contributed to the misconduct, including issues of law practice management, substance abuse, and mental health. In this way, the public is better protected from future misconduct by the lawyer.

During 2018-2019, the GRP administrator helped 75 attorneys successfully complete GRP.

## **PUNISHMENT FOR PROFESSIONAL MISCONDUCT**

The term “sanction” refers to the level of discipline imposed against a respondent attorney.

In an effort to ensure fairness and consistency in determining sanctions, the Texas Rules of Disciplinary Procedure contain guidelines for imposing sanctions as to different types of misconduct. In 2018, those guidelines were revised to more clearly state which sanctions should be issued for specific types of misconduct. Specifically, in imposing sanctions, the disciplinary tribunal should consider:

- the duty violated;
- the respondent attorney’s level of culpability;
- the potential or actual injury caused by the respondent attorney’s misconduct; and  
the existence of aggravating or mitigating factors.

### **PRIVATE REPRIMAND**

A private reprimand is available only if the case is tried before an evidentiary panel of the grievance committee. This sanction is not available in a case heard before a district court. A private reprimand is the least level of discipline that can be given. It is not public and this information is not published in connection with the specific lawyer and is not released upon inquiries from the public. However, this sanction remains a part of the lawyer’s disciplinary history and may be considered in any subsequent disciplinary proceeding. The Texas Legislature and Commission for Lawyer Discipline have established limitations on the use of private reprimands. During the 2018-2019 bar year, CDC obtained 124 private reprimands.

A private reprimand is generally appropriate in cases in which a respondent attorney causes little or no actual or potential injury and:

- does not act with reasonable diligence in representing a client, communicating with a client, providing competent representation, or abiding by client decisions;
- is negligent in dealing with client property;
- negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed;
- engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the respondent’s own interests, or whether the representation will adversely affect another client;
- engages in an isolated instance of negligence in determining the accuracy or completeness of information provided to a client;
- engages in an isolated instance of negligence in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity;
- engages in an isolated instance of negligence that involves an abuse of the legal process;
- engages in an isolated instance of negligence in improperly communicating with an individual in the legal system;
- negligently engages in any other conduct involving the failure to maintain personal integrity;
- engages in an isolated instance of negligence in not following applicable procedures or rules; or
- engages in an isolated instance of negligence that is a violation of a duty owed as a professional.

A private reprimand is **not** available if the respondent lawyer:

- has received a private reprimand within the preceding five-year period for a violation of the same disciplinary rule; or
- has engaged in misconduct involving theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
- is a prosecutor that has failed to disclose exculpatory evidence.

## **PUBLIC REPRIMAND**

This type of discipline is public and is published together with the name of the respondent lawyer.

A public reprimand is generally appropriate in cases in which a respondent attorney causes injury or potential injury and:

- fails to act with reasonable diligence in representing a client, communicating with a client, providing competent representation, or abiding by client decisions;
- is negligent in dealing with client property;
- negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed;
- is negligent in determining whether the representation of a client may be materially affected by the respondent's own interests, or whether the representation will adversely affect another client;
- is negligent in determining the accuracy or completeness of information provided to a client;
- is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld;
- negligently engages in conduct involving an abuse of the legal process;
- is negligent in determining whether it is proper to engage in communication with an individual in the legal system; negligently engages in any other conduct involving the failure to maintain personal integrity;
- while acting in an official or governmental position, negligently fails to follow applicable procedures or rules;
- negligently engages in conduct that is a violation of a duty owed as a professional;
- negligently violates the terms of a prior disciplinary order; or
- has received a private reprimand for the same or similar misconduct and engages in further similar acts of misconduct.

During the 2018-2019 bar year, CDC obtained 32 public reprimands.

## **SUSPENSION FOR A TERM CERTAIN**

Commonly referred to as an "active suspension," this public discipline means that the respondent lawyer is prohibited from practicing law for the length of the suspension. If the lawyer practices law during an active term of suspension, the conduct is a separate basis for further discipline and/or for contempt of the judgment. Upon the conclusion of an active suspension, the lawyer is eligible to practice law, provided that all other requirements for eligibility, such as payment of bar dues and compliance with continuing legal education, are current.

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*"My experience with your office was rejuvenating, refreshing, and enjoyable. Thank you for this opportunity."*  
— GRP Participant

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## **FULLY PROBATED SUSPENSION**

This type of discipline is public and is for a term certain; however, the suspension is “probated,” which means that the respondent lawyer may practice law during the period of suspension, but the lawyer must comply with specific “terms of probation” throughout the probated suspension period.

Terms of probation typically require that the respondent lawyer refrain from engaging in further misconduct; not violate any state or federal criminal statutes; keep the State Bar notified of current mailing, residential, and business addresses; comply with continuing legal education requirements; comply with the rules for maintaining trust accounts; and respond to any requests for information by CDC in connection with an investigation of allegations of misconduct.

Probation terms may also include, depending upon the facts of a particular case, that the respondent lawyer take additional continuing legal education, submit to a psychological evaluation, attend substance abuse counseling, practice law under the supervision of a designated monitor, or pay restitution and attorneys’ fees by a certain date.

## **PARTIALLY PROBATED SUSPENSION**

This type of discipline is a combination of an active suspension followed by a period of probated suspension and is public.

A suspension is generally appropriate when a respondent attorney causes injury or potential injury and:

- knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions;
- engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions;
- knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client;
- knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed;
- knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict;
- knowingly deceives a client;
- knows that false statements or documents are being submitted to the court or another or that material information is improperly being withheld, and takes no remedial action;
- knows that he or she is abusing the legal process;
- engages in communication with an individual in the legal system when the respondent knows or should know that such communication is improper;
- knowingly engages in criminal conduct that seriously adversely reflects on the respondent’s fitness to practice law;
- knowingly engages in conduct involving the failure to maintain personal integrity;
- while acting in an official or governmental position, knowingly fails to follow applicable procedures or rules;
- knowingly engages in conduct that is a violation of a duty owed as a professional;
- has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct.

During the 2018-2019 bar year, CDC obtained 152 suspensions.

## **DISBARMENT**

This is the most severe discipline resulting in a complete loss of a respondent lawyer's license to practice law. Once disbarred, the lawyer's name is removed from the membership rolls of the Supreme Court and the lawyer is required to remit his or her law license and bar card.

After five years, a disbarred lawyer may petition a district court to be reinstated to the practice of law. The disbarred lawyer must prove that reinstatement is in the best interest of the public and the profession, as well as the ends of justice. If such an application is granted, the disbarred lawyer is not automatically granted a law license. The disbarred lawyer must still pass the bar exam administered by the Texas Board of Law Examiners.

Disbarment is generally appropriate when a respondent attorney causes injury or potential injury and:

- abandons his or her law practice;
- knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions;
- engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions;
- knowingly converts client property;
- with the intent to benefit himself or another, knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed;
- without the informed consent of the client, engages in representation of a client knowing that the respondent's interests are adverse to the client's with the intent to benefit the lawyer or another;
- without the informed consent of the client, simultaneously represents clients that the respondent knows have adverse interests with the intent to benefit the lawyer or another;
- without the informed consent of the client, represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the respondent or another;
- knowingly deceives a client with the intent to benefit the respondent or another;
- with the intent to deceive the court or another, makes a false statement, submits a false document, or improperly withholds material information;
- knowingly engages in an abuse of the legal process with the intent to obtain a benefit for the respondent or another;
- intentionally tampers with a witness;
- makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding;
- improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding;
- engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses;
- knowingly engages in any other conduct involving the failure to maintain personal integrity;
- while acting in an official or governmental position, knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another;

- knowingly engages in a conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the respondent or another;
- intentionally or knowingly violates the terms of a prior disciplinary order; or
- has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct.

During the 2018-2019 bar year, CDC obtained 14 disbarments.

### **ANCILLARY SANCTIONS**

Finally, the term “sanction” may include as an ancillary requirement: (1) restitution (which may include repayment to the Client Security Fund of the State Bar of any payments made by reason of the respondent lawyer’s misconduct); and (2) payment of reasonable attorneys’ fees and all direct expenses associated with the disciplinary proceedings.



*Grievance Committee members  
Denise Peterson and Cedric Joubert.*



*Regional Counsel Bill Moore and Grievance  
Oversight Committee member Andra Mulder.*



*Panel Member Perspectives Q&A.*

## **OTHER DISCIPLINARY PROCEEDINGS**

### **COMPULSORY DISCIPLINE**

If an attorney has been convicted of or pleaded nolo contendere to, or has been put on probation, with or without an adjudication of guilt, for a serious or intentional crime (as those terms are defined in the TRDP), CDC will seek compulsory discipline.

Crimes that subject a lawyer to compulsory discipline include barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or property; any crime involving misapplication of money or other property held as a fiduciary; and any attempted conspiracy or solicitation of another to commit any of these crimes.

These proceedings are filed with the Board of Disciplinary Appeals. The criminal judgment or order of deferred adjudication is conclusive evidence of the attorney's guilt of the commission of the crime. If the criminal conviction of a serious or intentional crime is on appeal, the lawyer's license shall be suspended during the pendency of the appeal. Where the sentence includes any period of incarceration other than as a condition of probation, the lawyer shall be disbarred. Where the criminal sentence is fully probated, BODA has the discretion to either suspend for the period of criminal probation or disbar the attorney. A party appeals from a compulsory discipline decision to the Texas Supreme Court.

During the 2018-2019 bar year, 13 of the sanctions entered were a result of compulsory discipline cases.

### **INTERIM SUSPENSION**

If CDC determines during the course of investigating a complaint that one or more grounds exist to support seeking an interim suspension of the respondent's law license, CDC can seek authority from the Commission to pursue an interim suspension. During 2018-2019, CDC did not seek any interim suspensions.

If such authority is given, a petition is filed in a district court of proper venue, service is obtained on the respondent, and the court is to set a hearing within 10 days. The court may suspend the attorney pending final disposition of the disciplinary action if the court finds by a preponderance of the evidence that the respondent poses a substantial threat of irreparable harm to clients or prospective clients. Any of the following elements conclusively establishes such a substantial threat of irreparable harm:

- Conduct that includes all elements of a serious crime (as that term is defined in the disciplinary rules); or
- Three or more acts of professional misconduct as defined in the rules, whether or not there is harm; or
- Any other conduct that, if continued, will probably cause harm to clients or prospective clients.

## **RECIPROCAL DISCIPLINE**

If an attorney is disciplined in another jurisdiction where the attorney is licensed to practice law, CDC may seek the identical or “reciprocal” discipline. These proceedings are filed with the Board of Disciplinary Appeals. CDC files a petition for reciprocal discipline, which includes a certified copy of the order of discipline from the other jurisdiction and requests that the lawyer be disciplined in Texas. BODA notifies the attorney, who has 30 days to show why imposition of the identical discipline in Texas would be unwarranted. Defenses available to the attorney include the following:

- The procedure in the other jurisdiction was so lacking in notice or opportunity to be heard that the attorney was deprived of due process.
- There was such an infirmity of proof in the other jurisdiction that the conclusion that was reached should not be accepted as final.
- Imposition of identical discipline would result in grave injustice.
- That the misconduct established in the other jurisdiction warrants a substantially different discipline in this state.
- That the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute professional misconduct in this state.

Absent establishment of a defense, BODA shall impose discipline identical, to the extent practicable, with that imposed by the other jurisdiction. A party appeals a reciprocal discipline decision to the Texas Supreme Court. During the 2018-2019 bar year, 11 of the sanctions entered were a result of reciprocal discipline cases.

## **DISABILITY SUSPENSION**

A disability is any physical, mental, or emotional condition that results in an attorney’s inability to practice law or to carry out his or her professional responsibilities. No substantive rule violation is required to find that an attorney has a disability.

If CDC during a just cause investigation, or an evidentiary panel during the course of an evidentiary proceeding, believes that an attorney is suffering from a disability, the matter is forwarded to BODA for appointment of a district disability committee. The district disability committee determines whether the respondent is, in fact, suffering from a disability and, if so, indicates such to BODA, which then enters an order suspending the attorney for an indefinite period.

The disability process tolls the four-year statute of limitations for disciplinary matters.

During 2018-2019, CDC sought and obtained three disability suspensions.

## **REVOCAATION**

Violation of any term of the probated portion of a suspension may subject a respondent lawyer to a “revocation” of the probation resulting in an active suspension from the practice of law. When a judgment is entered by an evidentiary panel of the grievance committee, the revocation proceeding is filed before BODA. When a judgment is entered by a district court, the revocation proceeding is filed with the district court. If CDC proves a violation of probation by a preponderance of the evidence, the probation is revoked and the respondent attorney is suspended from the practice of law without credit for any probationary period served. An order revoking a probated suspension cannot be superseded or stayed pending an appeal. During 2018-2019, CDC sought and obtained one revocation of probation.

## GRIEVANCE SUPPORT

CDC, in its administration of the Texas attorney discipline system, is greatly supported by a number of other State Bar programs, departments, and Supreme Court-appointed committees. The work of these groups impacts the number of grievances filed against lawyers and/or provides rehabilitative assistance to lawyers who are disciplined.

### CLIENT-ATTORNEY ASSISTANCE PROGRAM

The Client-Attorney Assistance Program, or CAAP, is a voluntary confidential dispute resolution service of the State Bar of Texas. Its objective is to facilitate communication and the transfer of appropriate documents, as well as foster productive dialogue to help Texas lawyers and their clients resolve minor concerns, disputes, or misunderstandings impacting the attorney-client relationship. In 2018-2019, CAAP resolved 1,126 matters, the highest number of resolutions since the 2013-2014 bar year.

### ADVERTISING REVIEW COMMITTEE

The Advertising Review Committee is responsible for reviewing lawyer advertisements and written solicitations as required by the Texas Disciplinary Rules of Professional Conduct. The ARC, through the State Bar's Advertising Review Department, manages the filing and review process for attorneys that market their services to the public to ensure that lawyers are complying with established ethical requirements.

In the 2018-2019 bar year, the department reviewed 3,028 submissions, with the largest category being electronic filings. Electronic media continues to be the focal point for Ad Review. To further the department's educational outreach, the department provides a free one-hour ethics credit presentation focused on attorneys using social media to disseminate information about their legal services. The department is also responsible for distributing non-filer notices to attorneys who have not filed an advertisement.

### LAW PRACTICE MANAGEMENT

The Law Practice Management Program was implemented by the State Bar of Texas to assist solo and small firm practitioners in the delivery of legal services by developing and promoting competent, professional, efficient, effective, economical, and innovative law office management practices. Often, a referral to the bar's Law Practice Management resources will be incorporated as a term of a disciplinary judgment, as many complaints stem from a lawyer's lack of knowledge in the appropriate management of his or her law practice.

For the 2018-2019 bar year, the program assisted more than 22,500 lawyers through online classes, live and video seminars, webcasts, website resources, and telephone and email inquiries. The Law Practice Management Program webpage received more than 14,000 visitors, with nearly 34,000 page views.

The website provides online resources to help attorneys start, maintain, and grow their law practices, including webcasts, articles, forms, and checklists available to aid attorneys in acquiring the skills they need to manage a law office effectively and avoid further practice management-related complaints.

TexasBarCLE provided 8,600 lawyers with law practice management CLE programming at 174 events.



*Swearing in at Houston Grievance Committee Training by Alistair Dawson.*



*State Bar Directors Nicole Voyles and Laura Gibson with Houston Regional Counsel Bill Moore.*



Houston Regional Counsel Bill Moore and State Bar Director Kate Bihm.

### MINIMUM CONTINUING LEGAL EDUCATION DEPARTMENT

The State Bar of Texas requires that every attorney complete 15 hours of continuing legal education each year to maintain an active law license, three of which are required to be in the area of ethics. This requirement is known as Minimum Continuing Legal Education.

The State Bar MCLE Department ensures that attorneys comply with the regulations and also approves courses for MCLE credit. Attorneys may access and update their MCLE records on the State Bar of Texas website. The department also offers an MCLE course search, which allows attorneys to search all approved CLE-accredited courses by date, topic, location, or sponsor.

Failure to comply with MCLE requirements can result in an administrative suspension from the practice of law. Practicing while on an administrative suspension is a violation of the Texas Disciplinary Rules of Professional Conduct.

### TEXAS LAWYERS’ ASSISTANCE PROGRAM

The State Bar of Texas established the Texas Lawyers’ Assistance Program in 1989. TLAP’s mission is to assist lawyers challenged by substance abuse and other mental health disorders that are interfering or may interfere with their ability to practice law in an ethical and professional manner. All assistance is confidential and may be accessed by calling 800-343-8527.

In addition to educating law students, lawyers, and judges about the types of impairments studies show disproportionately impact the legal profession, TLAP offers a variety of intervention, assessment and referral, and rehabilitative services to impaired lawyers. Calls to TLAP come either directly from the lawyer challenged by a substance use disorder or by another disorder such as depression or cognitive impairment, or from a “concerned other,” usually a friend, colleague, judge, or family member.

#### STATE BAR OF TEXAS PUBLIC PROTECTION DOLLARS ACTUAL EXPENDITURES (UNAUDITED) FY2018-2019

Commission for Lawyer Discipline	\$94,715	Texas Lawyers’ Assistance Program	\$408,716
Office of Chief Disciplinary Counsel	\$9,732,243	Client-Attorney Assistance Program	\$531,420
UPL Committee	\$184,373		
Grievance Oversight Committee	\$38,734	Total General Fund	\$12,494,685
Professional Ethics Committee	\$9,152		
Ombudsman Office	\$71,279	Client Security Fund - Claims Paid	\$660,980
Board of Disciplinary Appeals	\$600,975		
Advertising Review	\$182,465	Total State Bar Public Protection Dollars	\$13,155,665
Minimum Continuing Legal Education	\$640,613		

## GRIEVANCE OVERSIGHT COMMITTEE

The Grievance Oversight Committee is charged to study, review, and advise the Texas Supreme Court regarding the structure, function, and effectiveness of the discipline system. The GOC is composed of six attorneys and three public members appointed by the Texas Supreme Court. The committee is not part of the State Bar disciplinary process and neither considers nor resolves individual complaints involving attorney-client issues. The committee maintains a website, [txgoc.com](http://txgoc.com), and welcomes comments and suggestions from all interested parties.

During the 2018-2019 bar year, the Commission and CDC provided the GOC with the following information:

- Statistical data for the discipline system, including the number of grievances received, classification decisions, classification appeals, just cause determinations, summary disposition decisions, and elections to evidentiary or district court;
- Quarterly reports provided to the State Bar Board of Directors regarding the disposition of disciplinary proceedings by bar district and statistics of sanctions imposed;
- Written consumer complaints and responses;
- Responses to disciplinary system questionnaires received by CDC; and
- Portions of minutes from the Commission’s meetings regarding non-case-specific topics.



Houston attorney Sam Berstein and public members Bingham Green and Lever Mills.

## UNAUTHORIZED PRACTICE OF LAW COMMITTEE

The Unauthorized Practice of Law Committee is appointed by the Texas Supreme Court and is charged with preventing the unauthorized practice of law. The UPLC is composed of nine volunteer lawyers and laypersons appointed to three-year terms.

The practice of law by persons who are not authorized to do so frequently hurts the clients they may be trying to help, resulting in the loss of money, property, or liberty. The State of Texas limits the practice of law to persons who have demonstrated their knowledge of the law through education; who have passed a rigorous examination on the laws of Texas, including the rules of ethics; and who have passed a character review. The UPLC is prohibited from giving advisory opinions.

To ensure the public is protected from those who practice law illegally, the UPLC has divided the state into five regions: Northern, Central, Southern, Eastern, and Western. The UPLC has created 38 district subcommittees within the regions. Chairpersons are appointed to head the regional and district subcommittees. The busiest district subcommittees are Houston, Dallas, Austin, San Antonio, and Fort Worth. The UPLC maintains a website at [txuplc.org](http://txuplc.org), where individuals can fill out a complaint online and learn more about the workings of the committee.

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*“I have learned so much from this process. Please give my thanks to Heather as well. I am going to seek out opportunities to teach ethics in my new role. I actually wish I had seen these videos 17 years ago. The content was so helpful even now as a judge.” — GRP Participant*

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## PROFESSIONAL ETHICS COMMITTEE

The Professional Ethics Committee is a nine-member committee appointed by the Texas Supreme Court pursuant to Texas Government Code Section 81.091. The committee is charged with the responsibility of expressing opinions to questions regarding the propriety of professional conduct, which arise either upon a request for opinion by a State Bar member or upon the committee's own initiative. These opinions are published in the *Texas Bar Journal*. During the 2018-2019 bar year, the PEC issued 11 opinions on the following subjects, all of which can be found online at [legalethictexas.com](http://legalethictexas.com):

### OPINION 673 (AUGUST 2018)

The Texas Disciplinary Rules of Professional Conduct do not categorically prohibit informal lawyer-to-lawyer consultation for the benefit of a client, whether the consultation occurs in an online discussion group, an in-person meeting, or otherwise. However, inquiring lawyers must honor their duty of confidentiality under the Texas Disciplinary Rules of Professional Conduct.

If possible, the inquiring lawyer should limit such consultation to general or abstract inquiries that do not disclose confidential information relating to the representation. If it is not reasonably possible to address the issues in question using a general or abstract inquiry, a lawyer may reveal a limited amount of unprivileged client information in a lawyer-to-lawyer consultation, without the client's express consent, when and to the extent that the inquiring lawyer reasonably believes that the revelation will benefit the inquiring lawyer's client in the subject of the representation. The inquiring lawyer should do so using a hypothetical that does not identify the client. If under the circumstances a responding lawyer might match the hypothetical facts to a specific person or entity, or if it is reasonably foreseeable that the disclosure of the information will harm, prejudice or embarrass the client, the discussion of hypothetical facts without the client's consent may violate the Texas Disciplinary Rules of Professional Conduct.

An inquiring lawyer may not reveal confidential information protected by the lawyer-client privilege without the client's express, informed consent. An inquiring lawyer may not reveal unprivileged confidential information for the benefit of the client if the client has expressly instructed the lawyer not to do so. In deciding whether and to what extent disclosure of unprivileged client information would be in the client's best interest, the inquiring lawyer should take into account whether the responding lawyer has agreed to maintain the confidentiality of the consultation.

The responding lawyer must take reasonable steps to avoid providing information that could impair any obligations to the responding lawyer's clients.

### OPINION 674 (AUGUST 2018)

A lawyer, including a lawyer with a 501(c)(3) nonprofit law firm, violates the Texas Disciplinary Rules of Professional Conduct by soliciting prospective clients or non-clients who have not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship for the purpose of providing legal services at a below-market flat-rate fee if those services would generate a pecuniary gain for the lawyer and the persons being solicited are not members of the qualified nonprofit organization to which the law firm belongs.

### **OPINION 675 (AUGUST 2018)**

A Texas lawyer, acting as mediator, does not violate the Texas Disciplinary Rules of Professional Conduct by preparing and providing to the parties a draft of a written agreement that memorializes the terms of the parties' settlement reached during the course of the mediation, or by suggesting additional terms for inclusion in the draft agreement.

### **OPINION 676 (AUGUST 2018)**

The Texas Disciplinary Rules of Professional Conduct prohibit a lawyer from retaining an expert or disclosing confidential information to a prospective expert when the lawyer has no substantial purpose other than to attempt to disqualify or otherwise prevent the expert from being used by, including testifying on behalf of, an opposing party.

### **OPINION 677 (SEPTEMBER 2018)**

Under the Texas Disciplinary Rules of Professional Conduct, the law partner of a part-time municipal court judge may not represent defendants in criminal cases pending before other judges in that municipal court unless the lawyer reasonably believes the representation of the criminal defendants will not be materially affected and, after full disclosure, the criminal defendant clients consent to the representation.

### **OPINION 678 (SEPTEMBER 2018)**

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer is not prohibited from serving as both executor and as counsel for the executor; however, the lawyer must evaluate whether there are conflicts of interests before and during the representation including any arising from the lawyer serving in the dual roles. If the representation of the executor will be adversely affected by the lawyer's or law firm's own interests, then the lawyer may not serve as counsel for the executor unless the lawyer can obtain the consent required under the Texas Disciplinary Rules of Professional Conduct. If a lawyer cannot serve as counsel for the executor because of such a conflict, the other lawyers in the lawyer's law firm are also prohibited from representing the executor. Finally, additional limitations can arise if the lawyer, serving as executor, should or may be a witness in a probate or other legal proceeding related to the estate, which limitations may affect whether the lawyer can be both a fact witness and an advocate before a tribunal in the same proceeding.

### **OPINION 679 (SEPTEMBER 2018)**

A lawyer may renegotiate his fixed, flat fee for representing a client in a litigation matter after the litigation is underway if modification of the fee agreement is fair under the circumstances. The burden of proving fairness is the lawyer's and will depend upon factors such as the length of the lawyer-client relationship, whether the reason for the renegotiation could have been anticipated at the outset of the representation, and the client's level of sophistication. Before seeking to renegotiate a fixed fee, the lawyer should be mindful of the risks that the lawyer voluntarily assumed when proposing or agreeing to that fee — including the possibility that the fixed fee might not be adequate to compensate the lawyer when compared to other fee arrangements.

### **OPINION 680 (SEPTEMBER 2018)**

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer may use a cloud-based electronic data storage system or cloud-based software document preparation system to store client confidential information or prepare legal documents. However, lawyers must remain alert to the possibility of data breaches, unauthorized access, or disclosure of client confidential information and undertake reasonable precautions in using those cloud-based systems.

### **OPINION 681 (SEPTEMBER 2018)**

Under the Texas Disciplinary Rules of Professional Conduct, if a lawyer is aware that a third-party claimant has an interest in client funds in the lawyer's possession, the lawyer must pay the funds to the third party unless the claim is disputed by the client, in which case the lawyer must withhold the disputed portion from both the client and the third party until the dispute is resolved or the lawyer has interpleaded the disputed funds. For purposes of Rule 1.14 of the Texas Disciplinary Rules of Professional Conduct, a third-party claimant has an "interest" in client funds held by a lawyer only when the third party has a matured legal or equitable interest in those particular funds. A matured legal or equitable interest in particular client funds exists when the interest is based on:

- a. A statutory lien;
- b. A judgment that adjudicates ownership or disposition of the funds in question;
- c. A court order regarding the funds in question;
- d. A written assignment conveying an interest in the funds in question;
- e. A right of subrogation regarding the funds in question; or
- f. A signed letter of protection or similar agreement formed to aid the lawyer in obtaining the funds in question, which promises payment upon collection.

If a lawyer is obligated under Rule 1.14 to withhold client funds from the client due to the claim of a third party who has a matured legal or equitable interest in the funds, the lawyer's obligation to the third party survives and is unaffected by the client's termination of the lawyer-client relationship.

### **OPINION 682 (OCTOBER 2018)**

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer who represented a client in drafting and negotiating a contract and who may be called to testify as a fact witness in a subsequent lawsuit regarding that contract may not take an active role before the tribunal in the presentation of the matter unless (1) the testimony relates to an uncontested issue; (2) the testimony relates solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony, or (3) the lawyer has promptly notified opposing counsel that the lawyer expects to testify in the matter and disqualification of the lawyer would work substantial hardship on the client, assuming the lawyer-witness' testimony will not be substantially adverse to the client. Even if the lawyer-witness should not act as an advocate for a client before a tribunal in the presentation of a matter, the lawyer-witness may otherwise participate in the preparation of the matter. With the client's informed consent, another lawyer in the lawyer-witness' law firm may represent the client in the matter as an advocate before the tribunal.

**OPINION 683 (MARCH 2019)**

Extrajudicial statements about a case that is pending on appeal usually would not have a reasonable likelihood of materially prejudicing an adjudicatory proceeding — and thus usually would not violate the Texas Disciplinary Rules of Professional Conduct — particularly where the statements implicate the constitutional issues addressed by the U.S. Supreme Court in *Gentile v. State Bar of Nevada*.

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*“I got so much out of the program and had a lot of feedback. I loved the articles and the timetable. I am using many of things I learned in the program and feel my law office has benefited from the program!” — GRP Participant*

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*Outgoing Commission member Bruce Ashworth and Chair Noelle Reed.*



*Outgoing Commission member Vance Goss and Chair Noelle Reed.*



*Outgoing Commission member John Neal and Chair Noelle Reed.*



*Commission for Lawyer Discipline members 2019.*



*Attorney Will Nichols, State Bar Director Shari Goldsberry, and Houston Regional Counsel Bill Moore.*



*District 3 swearing in of panel.*



*Houston Training Team: Attorneys Tim Baldwin, Patricia Redman, John Brannon, Melisa Jordan, Will Nichols, and Regional Counsel Bill Moore.*

## STATE BAR OF TEXAS — A FEW STATS

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<b>103,342</b>	<b>Active members</b>
<b>91,244</b>	<b>In-state attorneys</b>
<b>49</b>	<b>Median age of in-state attorneys</b>
<b>1:313</b>	<b>Ratio of all in-state attorneys to Texans</b>
<b>1:606</b>	<b>Ratio of in-state private practitioners to Texans</b>
<b>65</b>	<b>Percentage of in-state attorneys who are private practitioners</b>
<b>10</b>	<b>Percentage of in-state attorneys who are government lawyers</b>
<b>11</b>	<b>Percentage of in-state attorneys who are corporate/in-house counsel</b>
<b>84</b>	<b>Percentage of in-state attorneys in the four largest metropolitan areas</b>
<b>7</b>	<b>Percentage of in-state private practitioners who work in firms with 200 or more attorneys</b>
<b>24</b>	<b>Percentage of in-state private practitioners who work in firms with five or fewer attorneys</b>
<b>\$120,811</b>	<b>Median income for full-time Texas attorneys</b>
<b>\$119,145</b>	<b>Median income for full-time solo practitioners</b>

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**NOTE:** Texas attorney data in this report is based on the State Bar of Texas membership records as of December 31, 2017, of each of the cited years. Texas general population data is based on July 2017 Census population estimates. Texas attorney income data is based on the 2017 State Bar of Texas Attorney Survey.

## **A TOOL FOR CONSUMERS**

*The State Bar of Texas website includes a  
“Find-a-Lawyer”*

*function that allows consumers to  
access information about Texas lawyers.*

*More than 381,838 searches are  
conducted each month,  
by about 174,271 unique visitors.*

*Each attorney profile lists public disciplinary  
actions in which there was a final  
judgment. The site lists only the type of action  
and its term (i.e., public reprimand,  
suspension, etc.). Users are directed to  
contact the Office of Chief Disciplinary  
Counsel for more details  
on the sanction.*



**STATE BAR of TEXAS**  
**Commission For Lawyer Discipline**

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