

GRIEVANCE OVERSIGHT COMMITTEE  
APPOINTED BY THE SUPREME COURT OF TEXAS

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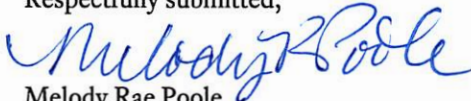
June 1, 2024

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

Under the Court's Order Reconstituting the Grievance Oversight Committee, Misc. Docket 11-9003, and the Amended Order Regarding Grievance Oversight Committee, Misc. Docket No. 12-9010, I am pleased to submit the Grievance Oversight Committee's 2024 Biennial Report.

On behalf of the Committee, thank you for the opportunity to serve and the privilege to advise the Court on issues affecting the Texas attorney disciplinary process. The Committee would be pleased to provide the Court with any additional information the Court might need regarding the Report, our recommendations, or other concerns of the Court regarding attorney discipline. While always available, the Committee's next meeting is at the State Bar of Texas Annual Meeting in Dallas in June, with plans to be in Austin in February 2025.

Respectfully submitted,



Melody Rae Poole

Chairperson 2022-2024

cc: Cindy Tisdale, President, State Bar of Texas  
Steve Benesh, President-Elect, State Bar of Texas  
Kennon Lily Wooten, Chair, State Bar of Texas Board of Directors  
Paul Stafford, Chair-Elect, State Bar of Texas Board of Directors  
Trey Apffel, Executive Director, State Bar of Texas  
Judge Monica A. Gonzalez, Chair, Commission for Lawyer Discipline  
Seana Willing, Chief Disciplinary Counsel  
Kelli M. Hinson, Chair, Board of Disciplinary Appeals  
Jenny Hodgkins, Executive Director and General Counsel, Board of Disciplinary Appeals  
Stephanie Lowe, Ombudsman, Attorney Discipline System, State Bar of Texas  
Laura Pratt, President, Texas Young Lawyers Association  
Hisham Masri, President-Elect, Texas Young Lawyers Association

Grievance Oversight Committee  
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The Supreme Court of Texas

Biennial Report  
June 1, 2024

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**2024 REPORT TO THE SUPREME COURT OF TEXAS  
BY THE GRIEVANCE OVERSIGHT COMMITTEE**

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## BACKGROUND AND DESCRIPTION OF COMMITTEE ACTIVITIES DURING THE 2022-2024 BIENNIUM

The Texas Supreme Court (“Court”) originally established the Grievance Oversight Committee (“GOC” or the “Committee”) in the 1970s and most recently reconstituted the GOC by Order dated February 22, 2011, as amended January 28, 2012. The purpose of the Grievance Oversight Committee is “to assist the Court in its constitutional and statutory responsibility for the lawyer discipline system.”<sup>1</sup> As a body independent of the State Bar of Texas (“the Bar”) and a non-participant in the grievance process, the GOC is ordered to review reports of the participants in the discipline system, meet at least biennially with participants, periodically review the Rules of Disciplinary Procedure, consider public and attorney education of the disciplinary system, and report biennially to the Court with recommendations.<sup>2</sup> To carry out its mission, the Committee may solicit feedback from actual participants in the grievance process, access non-case-specific information, sit in on parts of meetings of system participants in which case-specific information is not discussed, and to respond to specific complaints on behalf of the Court, request and conduct confidential review of closed case files.<sup>3</sup> As the GOC explains in each confidential meeting, the GOC’s role is not to serve as an appellate or review body of a particular disciplinary proceeding, but to act as the eyes and ears of the Court reviewing holistically how the process is functioning, identifying and examining issues regarding the attorney-client grievance process and making recommendations. The Committee consists of nine members appointed by the Court, three of which must be attorneys, three of which must be public members with no interest in the legal profession, and three of which must have served in the disciplinary process.<sup>4</sup>

In the last biennium, the GOC visited each of the 17 bar districts in person, inviting varied stakeholders through email and telephone calls. The Committee also relied on the Bar’s social media presence to invite members of the public who otherwise would not know about the GOC to share their input. The Committee was contacted at [info@txgoc.com](mailto:info@txgoc.com) by a few interested stakeholders; additional stakeholders completed the Disciplinary System Survey at <https://www.txgoc.com>. The Committee met with members of the judiciary; representatives of public interest groups; law school professors; clerks and court reporters; grievance panel members; complainants; respondents and representatives of respondents; and local, specialty, and minority bar associations. The GOC reviewed the reports of and met with personnel from:

- The Chief Disciplinary Counsel of the State Bar of Texas (“CDC”),
- The Commission for Lawyer Discipline (“CLD”),
- The Client-Attorney Assistance Program (“CAAP”),
- The Board of Disciplinary Appeals (“BODA”),
- The Grievance Referral Program (“GRP”),
- The Ombudsman for Attorney Discipline (“Ombudsman”),
- The Texas Lawyers Assistance Program (“TLAP”),

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<sup>1</sup> Order of the Supreme Court of Texas, Grievance Oversight Committee, Misc. Docket No. 97-9066 (April 2, 1997).

<sup>2</sup> Amended Order Reconstituting the Grievance Oversight Committee, Misc. Docket No.11-9003 (February 22, 2011) as amended by Misc. Docket No.12-9010 January 12, 2012.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

- The Texas Young Lawyers Association (“TYLA”),
- The State Bar of Texas Board of Directors (“Board”) and Executive Director,
- The Committee on Disciplinary Rules and Referenda (“Rules Committee”), and
- The Texas Access to Justice Foundation Access to Legal Services Working Group (“Working Group”).

The GOC appreciates the opportunity to advise the Court on issues affecting the structure, function, and effectiveness of the disciplinary system and to bolster public confidence in the system. The GOC especially thanks the hundreds of volunteers, both attorney and non-attorney, whose efforts and time ensure that the grievance process remains both fair and efficient. The GOC overwhelmingly finds that the volunteers and employees in the Texas attorney discipline system are committed to protecting the public from unscrupulous practices while ensuring the fair and efficient processing of complaints for attorneys. The GOC thanks those who forwarded and shared invitations to meet with the GOC, and those who lent space for the GOC to visit with stakeholders in all 17 districts, from El Paso to Beaumont, Amarillo to McAllen. To ensure that the GOC receives candid and complete input from all participants, the GOC operates on a “non-attribution” basis, declining to identify any individual who provided specific comments or suggestions to the GOC. The GOC thanks each unnamed individual for sharing their experiences, concerns, and ideas with the GOC and taking the time to consider hard questions related to attorney discipline.

## **EXECUTIVE SUMMARY**

Overall, the GOC reports that the Texas attorney disciplinary system is well-functioning and contains adequate checks and balances and safety valves to both protect the public and ensure adequate due process and protections to attorney participants, while also mitigating against misuse of the grievance process for improper purposes. As addressed at the end of the report, there are over a dozen entities that play a part in the process comprised of attorney, judicial, and public members. Participants administering the disciplinary system include paid and volunteer contributors, with mixed appointments by the Governor, the Court, and the State Bar, and recruited on a local and regional basis—ensuring that a variety of perspectives are accounted for throughout the process and allowing opportunity for attorney and public participation. The GOC is honored to be part of such a vast group, both attorneys – and especially the public member volunteers – dedicated to ensuring that the Texas attorney grievance system fosters the role of the legal profession in serving the public and maintains high ideals and standards of conduct.

Still, the system is always subject to refinement to better serve the goals of the lawyer disciplinary process and ensure the functionality, efficiency, and fairness in those processes. The Report is divided into two main sections, with a view to both issue-spotting and education: (1) issues identified by the GOC either for further study or refinement based on the meetings with stakeholders; and (2) an overview of the of the Texas attorney discipline process and players for attorney and public education and identifying where there are needs for more resources or refinement.

The issues identified in the first section of the report include: the latest legislative changes affecting attorney discipline; potential issues tied to governing the largest percentage of attorneys age 65 or older in Texas history; judicial education on the grievance process; the ongoing problem of barratry prosecution; a look at expanding the use of the Client Attorney Assistance Program to resolve simple complaints outside of the grievance process; and a follow-up to the prior Report’s inquiry into the independent study researching any racial/ethnic discrepancies in grievance outcomes. Specifically, the GOC summarizes its recommendations on these topics:

- Texas Government code § 81.073 was amended in 2023 to require individuals filing grievances to have a “cognizable interest” to the legal matter. Any impact appears rather minimal based on the limited data, but the GOC recommends continued monitoring to ensure the new amendment does not result in legitimate grievances failing to be identified and addressed or insufficient to protect against misuse of the grievance system.
- Grievance panel-member training should include a module on identifying cognitive impairment and guiding members to the many resources available on aging issues.
- Mandatory education for state judiciary and staff on the Texas Disciplinary Rules, and making the training available for federal judiciary and staff as well voluntarily. Free electronic delivery of the Texas Bar Journal to court clerks to alert court staff of attorneys who have been suspended or disciplined.
- Creation of a state-wide committee, task force, or working group to track and investigate possible solutions to successfully combating barratry in Texas. Public education, both broad and targeted, and in multiple languages.
- Streamline the use of CAAP before grievances are filed, broaden its use, and better publicize the program.

Because the GOC repeatedly hears that attorney and public education about the players and stakeholders in the Texas grievance and disciplinary system are lacking, the second part of the report endeavors to identify the participants and stakeholders which provide checks and balances in how the process is administered. However, the system only functions with diligent attention to appointments and volunteer recruitment. The GOC recommends that while education is essential, there must also be more attention to broader recruitment to volunteer positions within the grievance system, and better attention by the entities with responsibility for the appointments in ensuring positions are timely filled.

Despite the persistent problem of effective education, the GOC overwhelmingly hears that the process is working. And in the small respects where closer evaluation and attention is merited, adaptations and changes are being made or proposed to effectively address concerns. In that spirit, the GOC identified these topics over the past two years as warranting specific attention.

## **2023 LEGISLATIVE CHANGE TO CLASSIFICATION OF GRIEVANCES**

The most significant development in the Texas grievance process since the GOC’s 2022 report was the passage of House Bill 5010 in the 2023 legislative session. The bill became effective September 1, 2023, and codified at Texas Government Code Section 81.073 (“§ 81.073”). Texas Rule of Disciplinary Procedure 1.06(G)(2) was amended to follow this legislation. The new law

alters the system for classification of grievances in two important ways. First, it defines those who may file a grievance, as previously anyone could file a grievance.<sup>5</sup> Second, it restores the right of respondent attorneys to appeal classification decisions to BODA. The full text of § 81.073 is:

**TEXAS GOVERNMENT CODE - GOV'T § 81.073. CLASSIFICATION OF GRIEVANCES**

(a) The chief disciplinary counsel's office shall classify each grievance on receipt as:

(1) a complaint, if the grievance:

(A) alleges conduct that, if true, constitutes professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct; and

(B) is submitted by:

(i) a family member of a ward in a guardianship proceeding that is the subject of the grievance;

(ii) a family member of a decedent in a probate matter that is the subject of the grievance;

(iii) a trustee of a trust or an executor of an estate if the matter that is the subject of the grievance relates to the trust or estate;

(iv) the judge, prosecuting attorney, defense attorney, court staff member, or juror in the legal matter that is the subject of the grievance;

(v) a trustee in a bankruptcy that is the subject of the grievance; or

(vi) any other person who has a cognizable individual interest in or connection to the legal matter or facts alleged in the grievance; or

(2) an inquiry, if:

(A) the grievance alleges conduct that, even if true, does not constitute professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct;

(B) the grievance is submitted by a person other than a person described by Subdivision (1)(B); or

(C) the respondent attorney is deceased, has relinquished the attorney's license to practice law in this state to avoid disciplinary action, or is not licensed to practice law in this state.

(b) A complainant or an attorney against whom a grievance is filed may appeal the classification of a grievance to the Board of Disciplinary Appeals, or the complainant may amend and resubmit the grievance.

*Amended by Acts 2023, Texas Acts of the 88th Leg. - Regular Session, ch. 1020, Sec. 1, eff. 9/1/2023.*

**BACKGROUND**

Before the 2023 amendment of § 81.073, Texas, like most every other state<sup>6</sup> did not limit who

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<sup>5</sup> Anyone can still file a grievance but the CDC may only act on the grievance if the complainant satisfies the new standard at §81.073(a)(1)(B).

<sup>6</sup> New Hampshire is the only other state that appears to have a standing requirement, limiting actionable grievances to those filed by a judge, attorney, person directly affected by the conduct, or person present when the conduct

could file a grievance.<sup>7</sup> The primary reason for no restriction on filing prior to amendment was the protection of the public. When creating §81.073 in 2002, the Legislature reasoned it would address a lack of accountability to the public in the grievance system; and at the time, distinguished cases filed specifically by clients as eligible for referral to CAAP.<sup>8</sup> Twenty years later, when the GOC was asked to review whether a standing requirement should be added, there was growing concern that in a politically-charged climate grievance systems inside and outside of Texas were being or could be utilized to attack political opponents or for personal vendettas. The GOC filed its report on this issue with the Court in January 2023.<sup>9</sup>

The GOC's report recommended that a standing requirement not be adopted. To continue as a self-governing Bar, a critical role is protection of the public. The Bar submits to dual oversight from the Court and Texas Legislature. The Legislature, while maintaining that the Court has superior expertise in regulating the profession, confirms their additional oversight role provides accountability to the public.<sup>10</sup> Thus, the report concluded that any action that might diminish the protection of the public should be taken only after a thorough vetting of the proposal. The GOC based its report on interviews with the array of stakeholders mentioned above; review of more than 45 years of commentary on the Texas attorney discipline system through Sunset reports, the State Bar Act, and Rules; writings surrounding the Texas Attorney Creed and previous legislation; comparison to the two largest state bars in the US; arguments from both sides in grievance litigation around the nation; and law review articles covering grievance attacks on attorneys representing unpopular views or clients dating back to the 1920s. Among stakeholders in Texas, the majority interviewed did not believe there should be a standing requirement. A smaller number of lawyers argued for a standing requirement to prevent the filing of frivolous complaints for embarrassment or political gain. The GOC believed based on its analysis and input to the Committee that the actual number of such filings for improper purposes is de minimis, that the existing system was built to weed them out, and that the risk to attorney versus the public did not warrant the change. The Legislature passed HB 5010 and amended Government Code §81.073.

## ANALYSIS

Section 81.073 impacts the disciplinary process in two very significant ways- (1) standing and (2) the right of respondent attorneys to appeal the initial classification decision. Instead of anyone

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occurred, reserving the option for attorney discipline office-initiated inquiries. N.H. R. of Pro. Att. Disc Sys. R. 37 (A)(II)(a)(3)(B)(ii).

<sup>7</sup> Under the former Rule 1.06(G), a "Complaint" meant "those written matters received by the Office of the Chief Disciplinary Counsel that, either on the face thereof or upon screening or preliminary investigation, allege Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct."

<sup>8</sup> Tex. Sunset Advisory Comm'n., *State Bar of Texas Staff Report March 2002*, 24-25, (May 29, 2024), <https://www.sunset.texas.gov/public/uploads/files/reports/State%20Bar%20of%20Texas%20Staff%20Report%2003%2078%20leg.pdf>, [hereinafter "2002 Sunset Report"].

<sup>9</sup> See full report at <https://www.txgoc.com/reports>.

<sup>10</sup> 2002 Sunset Report, at 7.



being able to file a complaint, there is now a list of five identified classes of persons<sup>11</sup> plus a general group consisting of “any other person who has a cognizable interest in or connection to the legal matter or facts alleged in the grievance.”<sup>12</sup> Clients are not specifically listed but would clearly fall in the “cognizable interest in or connection to” category.

The form for filing a grievance has been revised in response to the standing issue to identify who is filing the grievance and the connection to the actions in question.<sup>13</sup> The form asks the complainant whether they were a client or if they are within one of the five specifically identified categories or, finally, what interest in or connection they have to the attorney or the legal matter or facts alleged in the grievance. Cognizable is not used in the form as that term is not defined in the statute and would likely cause confusion to those filing complaints. CDC classification attorneys, in the first instance, will decide who falls in that category. (“Connection to” is a separate standard from cognizable interest and would appear to be a broader standing concept.) BODA’s interpretation on appeals may be the final word. Whatever the final definition, the GOC will continue to monitor how the new requirement is implemented given there have been concerns expressed that valid grievances alleging attorney misconduct which previously would have been investigated may now summarily be dismissed.

According to the CDC, 4,844 grievances were filed and decided by classification attorneys between September 1, 2023, and April 30, 2024.<sup>14</sup> 77 grievances were dismissed by the CDC for lacking standing, of which 57 were based solely on lack of standing, 20 were dismissed for both no standing and failure to allege professional misconduct, and four dismissals were appealed to BODA. During the same time frame BODA adjudicated only one case solely on standing, affirming the dismissal.<sup>15</sup> GOC will continue to monitor to determine if dismissals for lack of standing become a significant issue.

Rule 8.03 of the TRDP raises an issue as it potentially conflicts with Rule 1.06(G) (§81.073). Rule 8.03 requires lawyers “having knowledge or suspecting that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority.” This rule is not directed to minor violations but to major violations that call into question whether the lawyer should continue to practice law.<sup>16</sup> The question resulting is whether a lawyer not in one of the five specific groups in Rule 1.06(G) has a

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<sup>11</sup> Tex. Gov’t. Code §81.073 (B)(i) - (v).

<sup>12</sup> Tex. Gov’t. Code §81.073(B)(vi).

<sup>13</sup> See Tab A for the current English PDF version of the grievance form.

<sup>14</sup> Complaints filed before September 1st but decided after that date are not subject to the new standing requirement.

<sup>15</sup> BODA reviews each grievance to determine whether it alleges professional misconduct and that the complainant has standing. BODA looks first to see if the grievance alleges professional misconduct. If BODA determines that a complainant lacks standing, it will either affirm the CDC dismissal of the grievance, in the case of a complainant filed appeal, or reverse the CDC classification of the grievance as a complaint and dismiss it, in the case of a respondent filed appeal.

<sup>16</sup> While at least one lawyer opined to the GOC that Rule 8.03 is aspirational only and that lawyers do not report other lawyers, the GOC has met with several attorneys who have reported their peers. This assertion also ignores the mandatory “shall” requirement of Rule 8.03.

cognizable interest that permits the CDC to investigate the required filing. And as a follow-up, whether the CDC has authority to review under Rule 5.02, if not Rule 1.06(G).

As repeated in the GOC's January 2023 report from the Preamble to the Rules of Professional Conduct ("Preamble"), "failure to ensure peers comply with minimum disciplinary standards compromises the independence of the profession."<sup>17</sup> The 2017 Sunset Review noted the Bar's unique position of self-regulation as being a "clear outlier when compared to other Texas occupations" and urged the Bar to strengthen its public protection mission.<sup>18</sup> The concern that the ability to protect the public is weakened by a perception that the grievance process is being co-opted for political or other improper purposes must be balanced against the Bar's mission to protect the public. The GOC will continue to monitor the data to determine whether §81.073 adequately addresses legitimate concerns or whether the increased restrictions on who can file a grievance is resulting in bad actors escaping discipline.

One issue not addressed in the GOC report but brought to the attention of the GOC is whether the Legislature's passage of §81.073 conflicts with the inherent power of the Texas Supreme Court to regulate the legal profession. The GOC does not comment through this report on the merits of concerns that the Court's inherent power to regulate the bar has been usurped by the legislature because of its enactment of the amendments to §81.073, but instead notes for the Court's consideration that it has heard this concern.

## **RESPONDENT ATTORNEY APPEALS**

Section 81.073(b) states that a "complainant or an attorney against whom a grievance is filed may appeal the classification of a grievance to the Board of Disciplinary Appeals...". For the 20 years before September 1, 2023, only complainants could appeal a classification decision. But that was not always the rule.

The grievance system before 2002 differed greatly from the current system. Upon receipt by the CDC a grievance was assigned to a CDC investigator<sup>19</sup> who would make the initial classification decision. If classified as an inquiry, the grievance would be dismissed and the complainant could appeal to BODA; if classified as a complaint the respondent attorney could appeal to BODA. The CDC would investigate any matter finally determined to be a complaint and then the matter went to an investigatory hearing ("IVH"). There was no Summary Disposition Panel ("SDP") to allow the CDC to seek dismissal of the complaint after a CDC investigation. The IVH panel – not CDC- would determine if there was just cause to continue to trial. If the IVH panel found just cause, it would recommend a sanction. If the respondent did not accept the sanction the matter

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<sup>17</sup> Tex. Disc. R. Pro. Conduct Preamble par. 8 [hereinafter "TDRPC" and "Preamble"].

<sup>18</sup> Tex. Sunset Advisory Comm'n., State Bar of Texas Staff Report with Final Results 2016-2017 85<sup>th</sup> Legislature, A-7, (May 29, 2024), <https://www.sunset.texas.gov/public/uploads/files/reports/State%20Bar%20of%20Texas%20and%20Board%20of%20Law%20Examiners%20Staff%20Report%20with%20Final%20Results%206-21-17%200.pdf>, [hereinafter "2017 Sunset Report"].

<sup>19</sup> The CDC began using lawyers to make the initial classification decisions in 2005. There are currently four full time classification attorneys. The average time out of law school for these attorneys is approximately eight years.

would be heard by an evidentiary grievance panel. An attorney facing a sanction had the option to appeal to a district court, where the case would be decided by a jury.<sup>20</sup>

The 2002 Sunset Commission Report indicated that its primary concern was streamlining and shortening the grievance process.<sup>21</sup> Two areas were identified. First, there were too many unnecessary hearings. Every grievance classified as a complaint had to be heard by an IVH. An 80% IVH dismissal rate indicated to the Commission that most complaints were not meritorious. Second, the redundancy and complexity increased the complaint resolution time.

Many recommendations were made by the Commission, not all of which were implemented. For example, the Commission failed in removing the option for a respondent to choose a district court trial over an evidentiary hearing. As relevant for this report, the removal of an attorney's right to appeal a classification decision was enacted. The only mention of attorney appeals in the Report was where it stated that the "complainant would be able to appeal the classification of the grievance as an inquiry to the Board of Disciplinary Appeals and may amend and resubmit the grievance to the CDC. The respondent would not be able to appeal classification decisions since, unlike the current process, more thorough investigation would occur before a hearing took place."<sup>22</sup>

The GOC believes the reinstatement of respondent attorney appeals is a positive development in the grievance process. The GOC recommended this in 2007, noting the lopsided nature of appeal rights, the lack of oversight of potential misuse of prosecutorial discretion, and an inefficient use of resources.<sup>23</sup> The GOC's 2008 Report again urged the right of respondents to appeal.<sup>24</sup> In response, BODA supported the reinstatement, affirming it an improvement to the current system.<sup>25</sup> There does not appear to have been any further concerted effort before 2023 to reinstate respondent appeals. The GOC views the reinstatement as good for both complainants and lawyers in that unmeritorious matters will be resolved more quickly thereby streamlining the process while avoiding raising complainant expectations unnecessarily. However, because the reinstatement of attorney appeals was included with the amendment that imposed a standing requirement, the GOC is sensitive to the concern these two additions to the grievance process are "lawyer friendly" and will continue to monitor the consequences from both amendments and whether the results are undermining the Bar's ability to protect the public.

The reinstatement of respondent appeals is already having a significant impact on the grievance process. As expected from history, there has been a substantial increase in the number of appeals.

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<sup>20</sup> For a graph of the full grievance system in 2002, see excerpted page from the 2002 Sunset Report at Tab B.

<sup>21</sup> 2002 Sunset Report, at 21.

<sup>22</sup> *Id.*, at 25.

<sup>23</sup> The Grievance Oversight Committee, 2007 Report, 20, (May 29, 2024), [https://www.txgoc.com/files/ugd/531469\\_f9c8d304ef3c42e1a73de0315eba710b.pdf](https://www.txgoc.com/files/ugd/531469_f9c8d304ef3c42e1a73de0315eba710b.pdf), [hereinafter "2007 GOC Report"].

<sup>24</sup> The Grievance Oversight Committee, 2008 Report, 10, (May 29, 2024), [https://www.txgoc.com/files/ugd/531469\\_283bb94991e14d1b9e220f5795d01f6d.pdf](https://www.txgoc.com/files/ugd/531469_283bb94991e14d1b9e220f5795d01f6d.pdf), [hereinafter "2008 GOC Report"].

<sup>25</sup> Board of Disciplinary Appeals, Response to the Grievance Oversight Committee Report 2008, November 3, 2008.

During the period from 1995 – 2004 the average number of respondent appeals per year was approximately 900.<sup>26</sup> The average number of all appeals per year during this period was over 2700. The removal of respondent appeals caused the number of appeals to decline significantly and eventually was in the 1400 to 1500 range pre-Covid.<sup>27</sup>

The limited data confirms a significant increase in the number of appeals.<sup>28</sup> For the eight months since September 1, 2023, classification appeals have increased almost 40% from 784 appeals to 1076 appeals, of which 352 were respondent appeals (one third of all appeals).

The foregoing numbers are not surprising. An appeal is easy and simple. Under BODA Internal Rule 3.02 the CDC must provide a form for an appeal with any classification decision. The form basically only requires a signature and filing within 30 days of receipt of the classification decision to initiate the appeal. There is no downside for a respondent to file an appeal. New evidence is not allowed. The appeal is decided solely on what was presented to the CDC. A reversal for the respondent ends the grievance as an inquiry only.

When respondent appeals were previously allowed, BODA reversed in favor of respondents at over 20%, whereas complainant appeals were reversed just over 11% of the time. The BODA statistics show a continued higher reversal rate for respondents. Since September 1, 2023 BODA's overall reversal rate has increased from about 7% to about 12%. Interestingly, the reversal rate for complainant appeals dropped to 4.6%. On the other hand, the reversal rate for respondent appeals was 29.8%. Further analysis will be necessary when more data is available to determine why respondent reversal rates are so much higher, just as they were 20 years ago. A significantly higher reversal rate for respondents--even if justified--could affect the public's perception of the grievance process.

As discussed further below, the initial classification review is by an attorney employed by the CDC whose sole job is to classify grievances as either a complaint or an inquiry. That decision is made within 30 days of filing.<sup>29</sup> The complainant and respondent are then notified of the decision and advised of the right to an appeal. An appeal of the decision – by either a complainant or respondent- is reviewed by BODA, whose 12 members are attorneys appointed by the Court and independent of the CDC and Bar. These attorneys historically have had on average 25 years of legal experience and come from diverse practice areas and geographic regions. The current Board has four former judges. Classification appeals are generally determined by three-member panels, either by telephone conference or remote video. The BODA General Counsel or Assistant General Counsel participate but do not vote. This provides two initial layers of protection against a frivolous grievance being classified as a complaint.

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<sup>26</sup> See BODA Classification Appeals Summary at Tab C excerpted from the 2005 BODA Annual Report.

<sup>27</sup> BODA Annual Reports 2005-2020.

<sup>28</sup> BODA and CDC provided data in response to GOC requests and expects the data through the end of the fiscal year to be in their respective reports.

<sup>29</sup> Tex. R. Disciplinary Proc. Rule 2.10, Texas Center for Legal Ethics, 2024, (May 29, 2024), <https://legalethicstexas.com/resources/rules/texas-rules-of-disciplinary-procedure/classification-of-grievances/>, [hereinafter “TRDP”].

## RECOMMENDATION

The GOC will continue to monitor whether as a result of §81.073, meritorious grievances will be dismissed. Based on eight months of data, the impact of the new standing requirement appears negligible. However, the GOC recognizes that any claim alleging attorney misconduct that is rejected with no investigation could be harmful to a self-regulating bar.<sup>30</sup> As pointed out by the Sunset Commission in 2017 the Bar is an outlier (positively) as compared to other occupations in being able to regulate itself.<sup>31</sup> The GOC recognizes the possibility that complaints may be filed for inappropriate purposes and a perception that the Bar is being co-opted for improper political purposes or by persons with no connection to issues raised in the grievance could undermine public trust in the profession. If the standing requirement proves over time to cause more harm than benefits—which cannot be determined based on the limited data eight months after enactment of the amendments—the GOC believes the reinstatement of respondent appeals alone may be sufficient in striking a reasonable balance between the objective of protecting the public while also addressing how to prevent a grievance motivated by improper considerations from becoming a complaint.

## AGING ATTORNEY POPULATION

This past November 2023, the people of Texas expressed their concerns regarding aging judges by rejecting Proposition 13, which would have increased the minimum retirement age for judges from 70 to 75, and the maximum retirement age from 75 to 79. Supporters of Proposition 13 argued that people are working later into their lives and longer-serving judges bring much to the bench.”<sup>32</sup>

During the GOC’s interviews throughout the state, cognitive issues associated with aging attorneys and judges arose numerous times. While an aging professional population is not unique to the legal discipline, the limited access of the public to the courts and justice through the legal profession heightens the potential impact to others of continuing to practice law despite cognitive decline. Additionally, according to data from the U.S. Bureau of Labor Statistics, the legal profession has a higher percentage of older attorneys and lower percentage of younger attorneys when compared to the US workforce,<sup>33</sup> creating a more severe skills gap than other professions. State regulated professions are similarly researching late career screening programs, considering scope, timing, due process protections, accommodations, and public relations issues.<sup>34</sup> As

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<sup>30</sup> The GOC acknowledges that some grievances if not dismissed for lack of standing will be dismissed as an inquiry for failure to state a cognizable claim.

<sup>31</sup> 2017 Sunset Report, at A1.

<sup>32</sup> William Melhado and Pooja Salhotra, Texas Voters Reject Proposal to Increase Judge’s Retirement Ages, The Texas Tribune, Nov. 7, 2023, (May 29, 2024), <https://www.texastribune.org/2023/11/07/texas-judges-retirement-proposition-results/>.

<sup>33</sup> American Bar Association, 2023 Profile of the Legal Profession, (May 29, 2024), <https://www.abajournal.com/files/POLP.pdf>.

<sup>34</sup> Sharona Hoffman, JD, LL.M., SJD, Physicians and Cognitive Decline: A Challenge for State Medical Boards, Journal of Medical Regulation (2022) 108 (2): 19–28. August 10, 2022, Abstract, (May 29, 2024), <https://meridian.allenpress.com/jmr/article/108/2/19/484702/Physicians-and-Cognitive-Decline-A-Challenge-for>.

attorneys in Texas are self-regulated, the disciplinary system is heavily relied upon for catching troublesome performance that might be caused by cognitive decline, and guiding individuals to robust programs such as TLAP, which offers many services. Ideally, the cognitively impaired individual would be identified before entering the disciplinary system, yet this is a challenge as many are solo practitioners, lack self-awareness of their issues, and/or are afraid to reach out for assistance. To be fair, cognitive decline is not solely caused by aging, and there are many senior attorneys much sharper than their junior counterparts (aside from also having collected decades more experience and wisdom), but across the U.S. all professions are facing the “gray tsunami.”<sup>35</sup>

The Wall Street Journal recently reported that America has never had so many 65 year olds, pointing out that many are more well-off than their predecessors and are expected to live longer.<sup>36</sup> According to the 2023-24 Texas Attorney Statistical Profile, attorneys over 50 make up 48% of the Bar, with 20% over 65, and only 16% under 36.<sup>37</sup> Combine that with Columbia University’s study that 1 in 10 seniors over 65 suffer from dementia and an additional 22% from other mild cognitive impairment,<sup>38</sup> and at least 6% of Texas attorneys are likely suffering from some form of cognitive decline. This does not account for the myriad of other causes of cognitive decline, whether substance abuse, sleep deprivation, depression, medical conditions, etc.

Since 2017, the average number of grievances related to impairment ranged between 3% & 8%.<sup>39</sup> Those struggling with impairment (as well as those working alongside them) should be educated in the help available. In 2013, Bar leaders created a task force to investigate aging lawyer issues.<sup>40</sup> One recommendation was that continuing legal education be mandatory for attorneys practicing past age 70 or older, as they were previously exempt. The Court agreed and in 2015 issued an order amending the Rules.<sup>41</sup> The task force also recommended the Bar develop educational tools

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<sup>35</sup> America Counts Staff, 2020 Census Will Help Policymakers Prepare for the Incoming Wave of Aging Boomers, United State Census Bureau, Dec. 10, 2019, (May 29, 2024), <https://www.census.gov/library/stories/2019/12/by-2030-all-baby-boomers-will-be-age-65-or-older.html>.

<sup>36</sup> Clare Ansberry, America Has Never Had So Many 65-Year-Olds. They’re Redefining the Milestone, The Wall Street Journal, Feb. 6, 2024, (May 29, 2024), <https://www.wsj.com/health/america-has-never-had-so-many-65-year-olds-theyre-redefining-the-milestone-4383e769>.

<sup>37</sup> State Bar of Texas Department of Research and Analysis, State Bar of Texas Board of Directors: Attorney Statistical Profile (2023-2024), (May 29, 2024), <https://www.texasbar.com/Content/NavigationMenu/AboutUs/StateBarPresident/BoardofDirectors/MembersoftheBoard/BODProfile.pdf>.

<sup>38</sup> Jennifer Manly, One in Ten Older Americans Has Dementia, Columbia Univ. Irving Med. Ctr., Oct. 24, 2022, <https://www.cuimc.columbia.edu/news/one-10-older-americans-has-dementia#:~:text=In%20the%20first%20nationally%20representative,22%25%20have%20mild%20cognitive%20impairment> excerpted from Estimating the Prevalence of Dementia and Mild Cognitive Impairment in the US: The 2016 Health and Retirement Study Harmonized Cognitive Assessment Protocol Project, JAMA Neurology, Oct. 2024.

<sup>39</sup> CDC statistics do not track the narrow issue of cognitive impairment separate from any other impairment. Statistics track judgements that include rehabilitative conditions related to impairment, as well as disability suspension cases.

<sup>40</sup> State Bar of Texas Task Force of Aging Attorney Issues Report 3-18-2014, (May 29, 2024), <https://www.texasbar.com/Content/NavigationMenu/ForLawyers/AgingLawyerIssues/AgingLawyerTaskForceReport.pdf>.

<sup>41</sup> Order of the Supreme Court of Texas, Order Approving Amendments to Article XII of the State Bar Rules, Misc. Docket No. 15-9077. (Apr. 28, 2015), (May 29, 2024),

to assist attorneys in dealing with cognitive problems as well as the transition into retirement.<sup>42</sup> Today, the SBOT and TLAP websites offer an impressive list of resources, programs, articles, videos, and CLEs for those experiencing general aging issues or cognitive impairment, as well as for those supporting them. TLAP offers assistance, compassion, and support, available via text or phone 24/7. Topics covering all aspects of aging are available such as: Planning for Aging Well, Apps for Aging Lawyers, Avoiding Discrimination Against the Aging Attorney, Managing Life and Practice in the Golden Years, What the Aging Attorney Needs to Know About Professional Liability Insurance, Recognizing the Signs of Impairment, Closing a Law Practice, and many more.<sup>43</sup> In addition to the plethora of information the Bar has available regarding aging, the American Bar Association Commission on Law and Aging (ABACLA) has extensive coverage. The ABA is developing multi-disciplinary approaches to identify affected attorneys and using intervention protocols to assist them in winding down their practices with dignity. In coordination with the American Psychological Association, the ABACLA released the 2<sup>nd</sup> edition of the *Assessment of Older Adults with Diminished Capacity: Handbook for Lawyers* in 2021.<sup>44</sup>

Beyond any concern about cognitive impairment, the aging attorney population poses concerns about a justice gap, succession planning, and leveraging of the knowledge and expertise of lawyers transitioning out of legal practice. Texas increased its focus on lawyer transitions and appointing a successor attorney to manage one's law practice in the event of incapacity or death.<sup>45</sup> However, as of April 30, 2024, only 1,140 of 113,771 Texas lawyers had designated a successor attorney (an additional 150 volunteered to serve as custodians if needed). Reducing the focus to the 21% of Texas attorneys operating as solo attorneys without someone in the office to step in, that is still less than 5% participation.<sup>46</sup> In contrast, in April 2024, 17,253 Texas attorneys voted to add TRDP 13.05 regarding termination of custodianship.<sup>47</sup> If the appointing attorney and appointed custodian disagree on the appointing attorneys' competence, either party may petition a court for a determination.<sup>48</sup>

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<https://www.texasbar.com/Content/NavigationMenu/ForLawyers/MCLE1/EmeritusAttorneyExemption/15-9077AmendmentstoArticleXIIoftheStateBarRules.pdf>.

<sup>42</sup> 2014 State Bar of Texas Task Force on Aging Attorney Issues Report, Mar. 18, 2014, (May 29, 2024), <https://www.texasbar.com/Content/NavigationMenu/ForLawyers/AgingLawyerIssues/AgingLawyerTaskForceReport.pdf>.

<sup>43</sup> Texas Lawyers' Assistance Program, [What We Help With: Cognitive Decline](https://www.tlaphelps.org/cognitive-decline), (May 29, 2024), <https://www.tlaphelps.org/cognitive-decline>.

<sup>44</sup> American Bar Association Commission on Law and Aging with American Psychological Association, [Assessment of Older Adults with Diminished Capacity: Handbook for Lawyers](https://www.apa.org/pi/aging/resources/guides/diminished-capacity.pdf), 2<sup>nd</sup> Ed., 2021, (May 29, 2024), <https://www.apa.org/pi/aging/resources/guides/diminished-capacity.pdf>.

<sup>45</sup> Texas Bar Practice, [About Our Succession Planning Initiative](https://www.texasbarpractice.com/knowledgebase/article/succession-planning-initiative/), Jun. 24, 2021, (May 29, 2024), <https://www.texasbarpractice.com/knowledgebase/article/succession-planning-initiative/>.

<sup>46</sup> The ABA also stresses the importance of succession planning programs for helping attorneys decide, while still able, who will handle their client matters if the time comes: American Bar Association Center for Professional Responsibility, [Succession Planning](https://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/successionplanning/), (May 29, 2024), [https://www.americanbar.org/groups/professional\\_responsibility/resources/lawyersintransition/successionplanning/](https://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/successionplanning/).

<sup>47</sup> State Bar of Texas, [Results of the State Bar of Texas Rules Vote 2024](https://www.texasbar.com/Content/NavigationMenu/RulesVote/RulesVoteResults/RVResultsPercentage2024.pdf), Apr. 2024 (May 29, 2024), <https://www.texasbar.com/Content/NavigationMenu/RulesVote/RulesVoteResults/RVResultsPercentage2024.pdf>.

<sup>48</sup> State Bar of Texas, [Rules Vote: Summary of Proposed Amendments](https://www.texasbar.com/Content/NavigationMenu/RulesVote/2024Items/Rules-Vote-Summary-Final.pdf), (May 29, 2024), <https://www.texasbar.com/Content/NavigationMenu/RulesVote/2024Items/Rules-Vote-Summary-Final.pdf>.

Unlike judges in Texas, there is no mandatory retirement age for attorneys. Some law firms have mandatory retirement age policies, usually between ages of 65 and 70, but many firms have found this to be detrimental, as seasoned, capable attorneys simply find a practice elsewhere, taking their experience and lucrative accounts/clients with them.<sup>49</sup> This has led some law firms to abandon such policies along with the assumption that mature professionals cannot handle the workload.

Focused on reducing the justice gap, increasing attorney competence, and leveraging the vast wealth of experience and knowledge of Texas' more senior attorneys, much of the October 2023 Texas Bar Journal was dedicated to mentorship, the benefits to all parties, best practices in mentoring, and ways to create formal and informal mentorship programs throughout the state.<sup>50</sup> Texas already has the Pro Bono Mentor Match program wherein a small amount of CLE credit is provided to both mentor and mentee to tackle a pro bono legal matter.<sup>51</sup> There are other focused mentor programs, such as the Appellate Project, encouraging law students of color to pursue appellate work.<sup>52</sup>

The issue of older, competent judges wishing to continue to work as they are forced into retirement, as well as the issue of identifying and addressing judges and attorneys experiencing cognitive-impairment, are challenging. Treating the individuals with dignity while protecting clients and the public is most important.<sup>53</sup> The goal is to catch those attorneys and judges suffering cognitive impairment before they enter the grievance system,<sup>54</sup> while also utilizing the knowledge, skills, and energy of seasoned attorneys and judges willing and able to assist in preventing other struggling attorneys and judges of all ages from entering the discipline system.

## RECOMMENDATIONS

Include a section in grievance panel-member training on identifying cognitive impairment and guiding members to the many resources available on aging issues. This could be as simple as

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<sup>49</sup> Debra Cassens Weiss, More Law Firms Ease Mandatory Retirement Policies, American Bar Association, Aug. 31, 2022, (May 29, 2024), <https://www.abajournal.com/news/article/more-law-firms-ease-mandatory-retirement-policies>.

<sup>50</sup> The Texas Bar Journal, October 2023, (May 29, 2024), <https://lsc-pagepro.mydigitalpublication.com/publication/?i=802315>.

<sup>51</sup> State Bar of Texas, Pro Bono, (May 29, 2024), <https://www.texasbar.com/AM/Template.cfm?Section=AccessToJustice&Template=/CM/HTMLDisplay.cfm&ContentID=29927>.

<sup>52</sup> The Appellate Project, Mentorship Program: Making Appellate Work Accessible For All, (May 29, 2024), <https://theappellateproject.org/mentorship-program-2024-1>.

<sup>53</sup> Interestingly, the federal judicial system takes a different approach, as although Article III judges enjoy life tenure, appointment of magistrate judges in at least in some districts, including in Texas, includes age restrictions and protective measures. They may not be over 70 years of age at their initial appointment, however, a magistrate judge may continue to serve and be reappointed after age 70 upon a majority vote of all district judges of the court, which is taken when the magistrate judge reaches 70 and upon each anniversary thereafter. A magistrate judge already serving in a full-time or part-time position may be appointed to a different full-time or part-time position in the same district after age 70.

<sup>54</sup> Judicial discipline is managed by the State Commission on Judicial Conduct. <https://www.scjc.texas.gov/>



incorporating the many resources already created by the Bar and TLAP (which to their credit, account for a large percentage of the Senior Lawyer resources linked by the ABA).<sup>55</sup>

Likewise, ensure that attorney and judge associations are educated through their publications and conferences on aging issues and the resources available to them. As a plethora of factors could cause cognitive decline—some reversible if caught timely; recognizing the signs and knowing how to respond are critical to the person, profession, and public protection.

Consider adding a cognitive decline self-assessment quiz to the existing self-assessment quizzes on TLAP. Building upon the work started and the TLAP volunteer peer support format, identify and check-in regularly on older solo attorneys that might not otherwise have one-on-one peer support and assistance. As reflected by the US Surgeon General’s “Advisory about the Devastating Impact of the Epidemic of Loneliness and Isolation in the United States,” isolation can cause and exacerbate cognitive decline.<sup>56</sup> Bar leadership should continue to use their voices to promote and model healthy social connection; TLAP should continue to share narratives that help reduce stigmas and to offer support programs; personal connection should be embedded into Bar practices and programs; and individual attorneys should look at how the informal practices of everyday life provide opportunities to engage one another, actively seeking to build relationships and create a culture of connection within the profession.

In previous reports submitted by the GOC (2018 & 2020), a mentorship program pairing solo attorneys—who account for a large percentage of grievances filed<sup>57</sup>--with retired attorneys was strongly encouraged. This would benefit both retired attorneys, giving them opportunities to stay connected to the Bar and younger, solo practitioners. It is the belief that many grievances would be avoided all-together if solo attorneys had additional guidance and support. Timely capturing and funneling attorneys and judges forced to retire into a mentorship program is advised. Young and solo attorneys, many that have been stunted through the pandemic shutdown, would benefit from the experience, wisdom, and human connection these competent judges and attorneys offer, while providing mentors the opportunity to contribute significantly to the future of the bar and practice of law. In the words of the legendary and trailblazing Judge L. Clifford Davis who has continued his dedication to civil responsibility well into his golden years, and was appropriately honored by the Bar in 2023, “Never stop because it’s hard to get started.”<sup>58</sup>

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<sup>55</sup> American Bar Association, Commission on Lawyer Assistance Programs, (May 29, 2024), <https://www.americanbar.org/groups/lawyerassistance/articlesandinfo/seniorlawyerresources/>.

<sup>56</sup> Office of the U.S. Surgeon General, Our Epidemic of Loneliness and Isolation: The U.S. Surgeon General’s Advisory on the Healing Effects of Social Connection and Community, 2023, (May 29, 2024), <https://www.hhs.gov/sites/default/files/surgeon-general-social-connection-advisory.pdf>.

<sup>57</sup> Whether a respondent is a solo attorney is not required data collection in a grievance, but utilizing the data tied to Texas attorney membership, the CDC estimates that since 2018, solo practitioners account for between 36 & 44% of grievances.

<sup>58</sup> Cindy Tisdale, A Living Legend, Texas Bar Journal. Dec. 2023, 882, (May 29, 2024), <https://www.texasbar.com/AM/Template.cfm?Section=articles&Template=/CM/ContentDisplay.cfm&ContentID=62291>.

## **JUDICIAL EDUCATION ON DISCIPLINE RULES AND PROCESS**

Since recommending training for District Court Judges for Disciplinary Trials in the GOC's 2022 Report, the Committee continued to meet with judges across the state, both from rural and metropolitan districts, with the Texas Center for the Judiciary, and court personnel. In addition to the recommendations made in 2022, the GOC notes these additional areas of concern:

- Lack of training regarding the Rules of Professional Conduct governing attorneys;
- The question of duty and standing to report a suspected violation of the Rules of Professional Conduct; and
- District Clerks' need to be made promptly aware of attorneys who have been publicly suspended.

Many judges visiting with the GOC report little to no experience with the grievance process and Rules governing grievance procedure. With the implementation of the new 'standing' requirement discussed above, judges are now among the limited number of persons who may file a grievance and there is thus potentially a heightened need for them to do so when they observe attorney misconduct. Judges need to know that they are now in a finite number of 'first responders' to detect and address perceived Rule violations.

The courts are the eyes and ears of the system and must report perceived or outright violations of the Rules. Thus, training on the Rules is paramount to ensuring that the attorneys appearing before Texas state and federal judges are held to the highest standards of conduct to ensure the sanctity and garner the respect of Texas citizens in the legal process.

### **RECOMMENDATIONS**

Require mandatory CLE on the Rules either at the state judicial education conference or as a webinar in the judiciary's web-library and publicized in the quarterly periodical "In Chambers." As for the federal judiciary in front of whom Texas-barred attorneys regularly practice (Texas district courts and the United States Court of Appeals for the Fifth Circuit), there should be further study on the best opportunities to educate judges, law clerks, and court personnel about the Texas grievance process and Rules.

Survey the state judiciary regarding their individual experiences with grievance cases in their courts to identify and document areas of concern. Annually survey all judges who presided over a grievance hearing for their input on the effectiveness of the process and commentary on potential improvements.

Offer free electronic delivery of the Texas Bar Journal to state District Court Clerks, County Courts at Law Clerks and Municipal Court Clerks to alert the staff of attorneys who have been suspended or otherwise disciplined. Consider also including the federal judicial chambers and case managers in this distribution as well.

## BARRATRY

Although Texas criminalized barratry as long ago as 1876,<sup>59</sup> the issue remains an ongoing problem most prevalent in the personal injury arena. As this Committee learned from conversations with attorneys, it seems barratry is an open secret—everyone knows it happens, but it remains shrouded in the shadows. The GOC heard disturbing reports of blatant case running, including solicitation of clients in funeral homes aided by funeral directors.<sup>60</sup> Some attorneys expressed concern that barratry is getting significantly worse and the lack of effective enforcement of barratry laws only encourages rampant violations. Further concerns were over advancements in technology broadening how clients are solicited,<sup>61</sup> and most were concerned that Texas’ most vulnerable populations are those targeted, including Texas’ non-English speaking communities.

Texas approaches barratry in three ways: by criminal statute, through the Texas Rules of Professional Conduct, and by private cause of action against violators. All three have had limited success. Section 38.12 of the Texas Penal Code provides that the direct solicitation of a client in a personal injury case “before the 31<sup>st</sup> day after the date on which the accident or disaster occurred” is barratry, a third-degree felony.<sup>62</sup> There are no readily-available statewide statistics regarding the prosecution of barratry. TDRPC 7.06 prohibits a lawyer from accepting or continuing employment when procured by conduct in violation of related rules on advertising and solicitation.<sup>63</sup> Not dissimilar to previous years, the CLD 2023 Annual Report listed 16 barratry-grievances filed yet no sanctions issued.<sup>64</sup> Gov’t Code § 82.0651 creates a private cause of action for victims of barratry. Remedies under § 82.0651 include: recovery of actual damages; a \$10,000 fine; attorney’s fees; and even disgorgement of the entire contracted fee.<sup>65</sup> There are no readily-available statewide statistics regarding civil enforcement by barratry victims.

The statute of limitations has been a serious impediment to these cases. Barratry is generally recognized as a tort with an applicable two-year limitation beginning to run when the solicitation occurs. Since personal injury cases often take over two years to complete, this limitations issue creates a substantial impediment to victims in prosecuting barratry cases. An additional impediment to enforcement may come from the presentment of new challenges to the

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<sup>59</sup> H. P. N. Gammel, *The Laws of Texas 1822-1897*, Vol. 8, 1063 (1898), *An Act to Define and Punish Barratry*, Ch. 135 Sec. 1, Aug. 21, 1876, (May 29, 2024), <https://texashistory.unt.edu/ark:/67531/metapth6731/m1/1065/?q=harass>.

<sup>60</sup> Stories similar to this were relayed to the GOC, and as in the article, though attorneys claim to file grievances backed by evidence, the CDC reports no such grievances were filed: Mike Gallagher, *Law Firm Accused of ‘Ambulance Chasing’*, Albuquerque J., Sun., Aug. 11, 2019, (May 29, 2024), <https://web.archive.org/web/20220520180134/https://www.abqjournal.com/1352333/law-firm-accused-of-ambulance-chasing-2.html>.

<sup>61</sup> Ed McClees and Mark Thiessen, *Cold Texting: The New Wave of Barratry*, Harris County Criminal Lawyers Association, July 7, 2020, (May 29, 2024), <https://hccla.org/cold-texting-the-new-wave-of-barratry/>

<sup>62</sup> Tex. Pen. Code §38.12 (2013), (May 29, 2024), <https://statutes.capitol.texas.gov>.

<sup>63</sup> TDRPC 7.06.

<sup>64</sup> The State Bar of Texas Annual Report of the Commission for Lawyer Discipline Jun. 1, 2022 – May 31, 2023, 1, (May 29, 2024), <https://www.texasbar.com/AM/Template.cfm?Section=AnnualReports&ContentID=61567&Template=/CM/ContentDisplay.cfm>, [hereinafter “CLD 2023 Report”].

<sup>65</sup> Tex. Gov’t Code §82.0651(b).

constitutionality of current Texas anti-barratry rules, typically in the form of First Amendment challenges. On the regulatory side, the CDC identified difficulties standing in the way of barratry prosecutions, including: the sophistication of offending lawyers and barratry schemes, the reluctance of potential witnesses, and the difficulty of obtaining documentary evidence.

The GOC addressed barratry issues in its 2012, 2014, and 2016 reports. In 2016, the GOC recommended, among other things, that the Bar recognize that barratry has not been effectively addressed through the attorney-client disciplinary system as structured; the CDC consider coordinating with the Texas Attorney General's Office to track and report annually the number, type, and success of barratry prosecutions undertaken across the State; the CDC cooperate with local, state, and federal law enforcement agencies to assist in barratry prosecutions; and to increase public awareness of barratry through dedicated resources aimed at raising the general public's ability to recognize barratry, and the process to report it to the proper authorities.

## **RECOMMENDATIONS**

As this Committee suggested in 2016, we continue to recommend that the Bar recognize barratry as a serious problem detracting from the reputation of the profession. A review of applicable rules should be undertaken to ensure that they comply with Constitutional requirements. Public education needs to be both broad and targeted, and in multiple languages to reach the most vulnerable targets. The Committee also recommends that a state-wide committee, task force, or working group be created to investigate possible solutions to a problem that appears to be getting worse. Barratry remains a scourge that has not been effectively addressed by the Texas disciplinary system.

## **CAAP REFORM**

According to many attorneys, panel members, and former clients interviewed by the Committee, a significant amount of complaints involve issues that could potentially be solved simply with better communication between the attorney and client. Many clients turn to the grievance process to get the attention of the attorney because they feel they have no other alternative.

The Client-Attorney Assistance Program (CAAP) was originally created in response to the 1990 Sunset Report to provide a voluntary mediation and dispute resolution procedure addressing attorney misconduct that did not constitute a violation of the Rules. At that time CAAP also took over answering the grievance hotline to pre-screen potential complainants, redirecting them to appropriate services and resources when appropriate, and providing a neutral forum for resolving non-grievance level problems that affect the attorney-client relationship.<sup>66</sup>

The 2002 Sunset Report complained that the Bar had not implemented CAAP effectively and did not adequately promote CAAP. They noted that by dismissing complaints as inquiries or through SDP, complainant issues were not being resolved and attorneys were not benefitting from the

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<sup>66</sup> 2002 Sunset Report, at 31-36.

prevention of future grievances by improved client satisfaction and service. The Sunset Report recommended referring all grievances dismissed as inquiries or through SDP to CAAP.<sup>67</sup>

The 2017 Sunset Report again expressed frustration at the ineffective use of CAAP, recommending clearer connections between the disciplinary process and CAAP for more effective referrals by the CDC to CAAP. Additionally, it recommended ending the process of referring grievances dismissed at SDP to CAAP as too little too late.<sup>68</sup> In response, the TRDP were amended to clearly permit the CDC to make a ‘Discretionary Referral’ to CAAP at the classification stage. In 2022, the GOC addressed the need for BODA to refer to CAAP and consider CAAP resolutions.<sup>69</sup>

Returning to the initial intent behind the creation of CAAP, it was to provide a voluntary mediation and dispute resolution procedure addressing attorney misconduct that did not constitute a violation of the Rules, to prescreen potential complainants, and resolve minor conflicts without invoking attorney discipline. At present, unless referred by the CDC at classification – and thus after invoking attorney discipline, a complainant must go through a time-consuming self-help process before invoking the services of CAAP.

Most complainants do not know about the voluntary mediation procedure. When a complainant arrives at the Bar’s webpage about attorney discipline, there is a lengthy discussion of the grievance process with a note about calling the Grievance Information Helpline with questions set immediately above a link to a pamphlet on how to file a grievance.<sup>70</sup> There is no link to the CAAP website. Even if a client learned about and chose to request assistance from CAAP, the process to do so is laborious and discouraging.

- The client must first write and send by certified mail a letter detailing the specific grievances and give the attorney seven to ten business days to respond.
- If the attorney fails to respond, the client must then fill out the request form and wait at least five more business days for CAAP to respond.
- If the client’s request is accepted by CAAP, then CAAP sends a letter to the attorney.
- The client then waits—again—to see if the attorney responds, which, under CAAP’s rules, attorneys are not compelled to do.<sup>71</sup>

The arduous process likely pushes many clients to file a grievance – a form available to file immediately - when all they may be looking for is help getting the attorney’s attention.

Many lawyers also suggested they would prefer CAAP contact them before a client files a

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<sup>67</sup> *Id.*

<sup>68</sup> 2017 Sunset Report, at 39-42.

<sup>69</sup> Grievance Oversight Committee, *2022 Biennial Report*, Jun.1, 2022. 9-11, (May 29, 2024), <https://www.txgoc.com/files/ugd/531469457040b687cd4a83a835ee56721c2d26.pdf>.

<sup>70</sup> State Bar of Texas, *File a Grievance*, (May 29, 2024), <https://www.texasbar.com/Content/NavigationMenu/ForThePublic/ProblemwithanAttorney/GrievanceEthicsInfo1/FileaGrievance.htm>.

<sup>71</sup> State Bar of Texas, *KNOW THE STEPS: How to Get Assistance From CAAP*, (May 29, 2024), <https://www.texasbar.com/Content/NavigationMenu/ForThePublic/ProblemwithanAttorney/CAAP/CAAP-Checklist.pdf>

grievance. An attorney may honestly believe they have done their due diligence in communicating with their client and not realize the client is upset. During interviews, attorneys often confess a lack of awareness about the grievance process and deeply fear receiving a formal complaint filed against them. The majority said it would be in their interest to engage CAAP first to avoid the grievance process altogether. It is noted however, that in the Ombudsman’s 2023 report, several complaints were received after grievances were referred to CAAP against the complainant’s wishes and that in these instances, CAAP encourages the attorney to contact the complainant directly, whom the complainant may no longer desire to hear from.<sup>72</sup>

## **RECOMMENDATIONS**

Use of CAAP before filing a grievance should be streamlined and stronger efforts to publicize the program should be made to encourage use of the program. The committee discussed at length the pros and cons of having the landing page for Texas attorney discipline focus on CAAP’s voluntary mediation services with an affirmative opt-out required to move forward to the grievance form.

Even if the CDC classified a grievance as a complaint instead of making a Discretionary Referral to CAAP, before investigating the matter beyond the four corners of the complaint, the parties should be informed of the option to mediate minor complaints through CAAP.<sup>73</sup>

## **STUDY OF POTENTIAL DISPARITIES IN THE DISCIPLINE OF TEXAS LAWYERS**

In its 2022 Report, the GOC mentioned the 2019 California study that discovered significant disparities in disciplinary sanctions by race. The CDC reported there was an ongoing independent study of the Texas system and the GOC committed to reviewing the data when available. Since then, the study was abandoned by the study authors, because of issues with drawing any reliable conclusions from the limited data available. While the CLD publishes data on the race of respondents, panel members, and the bar at large if the data is voluntarily provided, the discipline level received by those respondents is not sorted and published by race. The last update received from the CDC indicated that if a membership survey underway in another state proved helpful perhaps Texas would follow.

## **RECOMMENDATION**

As the GOC continues to receive reports of a perception of disparity in discipline in Texas, it is crucial to collect and look at the data to either address the problem or misperception. Whether the CDC collects the information to complete a reliable study or completes a member survey on

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<sup>72</sup> Office of the Ombudsman for the Attorney Discipline System of the State Bar of Texas, Annual Report Sept. 1, 2022 – Aug. 31, 2023, 8-9, (March 29, 2024), [https://www.txgoc.com/files/ugd/531469\\_e501f15639f34d199f10ce6631f3b3df.pdf](https://www.txgoc.com/files/ugd/531469_e501f15639f34d199f10ce6631f3b3df.pdf), [hereinafter “2023 Ombudsman Report”].

perceptions, concerns, and recommendations, action should be sooner than later. After four years of discussions, there so far has been nothing to show in result. The GOC agrees with the 2017 Sunset recommendation for more detailed tracking and reporting of disciplinary case outcomes.

## **OVERVIEW OF THE TEXAS GRIEVANCE SYSTEM**

The GOC continuously hears that attorneys do not know how to respond to a grievance, how the Texas attorney grievance process is carried out, or the difference between grievance and malpractice. Many panel members report that before being asked to volunteer, they had thought little about grievances or had only followed peripheral chatter and the sometimes inaccurate news media. This is not for a lack of educational resources available. A search on any given day of Texas Bar CLE reflects approximately a dozen recent CLEs on the grievance process, avoiding a grievance, and responding to a grievance coordinated by various bar sections. During this biennium, the CDC posted a three-part series on attorney discipline in the Texas Bar Journal and makes themselves regularly available for CLEs to local bar association and sections. TYLA updated and published a Pocket Guide answering most if not all questions posed. They also created and shared a free video CLE on responding to a grievance.<sup>74</sup> The Executive Director, Board Chair, Bar President, and TYLA President each included information about grievance and participation in self-regulation in their Texas Bar Journal articles.

The GOC has observed that at times it may feel to some that there are too many cooks in the kitchen in shaping the grievance process, and the resulting product leaves something to be desired. For certain there have been changes made and reversed, and some ideas have come full circle. The ability of the respondent attorney to appeal classification is one example. The option was removed after the 2002 Sunset Review due to the concern that the grievance process had too many steps and took too long. Two decades later, the option returns. In another example, while one Sunset Report was concerned with heavy reliance on volunteers, it seems to contribute to the Bar having among the lowest attorney dues & licensing costs amongst the largest mandatory bars.<sup>75</sup> The process is iterative, which shows the system is adaptive and responsive based on concerns raised.

Many committees are currently short volunteer members—granted many of these vacancies are public members who are more difficult to identify but whose value to the Texas system of self-regulation cannot be understated. The GOC has overwhelmingly found that attorneys who volunteer in the grievance process are more aware of grievance procedures, Bar resources for the protection of the public and improvement of legal services, and their own conduct and office practices needing attention to avoid going through the grievance process themselves. Volunteer recruitment needs to remain paramount.

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<sup>74</sup> The TYLA video may be found here: <https://www.youtube.com/watch?v=cRD3EHJ2PSw>. TYLA also maintains an older Ten Minute Mentor series covering grievances that the GOC understands TYLA is considering the best format for updating: <https://www.texasbarcle.com/CLE/tyla/home.asp>.

<sup>75</sup> State Bar of Texas Commission for Lawyer Discipline, 3.1, 2022 – May 31, 2024, 5, (May 29, 2024), <https://www.texasbar.com/AM/Template.cfm?Section=AnnualReports&ContentID=61567&Template=/CM/ContentDisplay.cfm>, [hereinafter “CLD 2023 Annual Report”].

As stated above, since the GOC repeatedly hears that attorney and public education about the players and stakeholders in the Texas grievance and disciplinary system are lacking, it endeavors below to identify the participants and stakeholders which provide checks and balances in how the process is administered. As noted, however, the system described below only functions with diligent attention to appointments and volunteer recruitment.

## **PARTIES RELEVANT TO TEXAS ATTORNEY DISCIPLINE**

The Supreme Court of Texas has the constitutional and statutory responsibility to regulate Texas lawyer discipline.<sup>76</sup> Each attorney admitted to practice law in Texas is subject to the disciplinary and disability jurisdiction of the Court.<sup>77</sup> In furtherance of its powers to supervise the conduct of attorneys, the Court must establish disciplinary and disability procedures and minimum standards.<sup>78</sup>

The State Bar of Texas was created to aid the judicial branch in its constitutional powers to regulate the practice of law.<sup>79</sup> The Bar is a public corporation and administrative agency under the control of the Court. The Court promulgates the rules governing the Bar.<sup>80</sup> Membership in the Bar is required for all persons licensed to practice law in Texas.<sup>81</sup> As part of its public corporation structure, the Bar is governed by a board of directors with the majority of members elected by the membership, some non-attorney members appointed by the Court and confirmed by the Senate, and some appointed by the president of the Bar and confirmed by the Board.<sup>82</sup> Of those appointed by the Court, two must come from a list provided by the governor. The Board elects an executive director to carry out the policies and directives of the Board, and to act as corporate secretary and treasurer, among a longer list of prescribed duties.<sup>83</sup> As an administrative agency, the Bar is subject to the Texas Sunset Act, and is reviewed by the state legislature every twelve years to determine whether the funds available to the agency are utilized reasonably to achieve the purposes for which the agency was created.<sup>84</sup>

Over the decades, in carrying out its duties to supervise the conduct of Texas attorneys, the Court has promulgated and edited rules related to the Bar, minimum standards of attorney conduct, and disciplinary procedures. It has surveyed, studied, tweaked, and fine-tuned. The Legislature likewise, periodically revises Government Code Chapter 81, better known as the State Bar Act, which results in corresponding rule changes by the Court. The result is a robust,

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<sup>76</sup> TRDP Preamble.

<sup>77</sup> Tex. Gov't Code §81.071.

<sup>78</sup> Tex. Gov't Code §81.072.

<sup>79</sup> Tex. Gov't Code §81.011.

<sup>80</sup> Tex. Gov't Code §81.024.

<sup>81</sup> Tex. Gov't Code §81.051.

<sup>82</sup> Tex. Gov't Code §81.020.

<sup>83</sup> Tex. Gov't Code §81.029.

<sup>84</sup> Tex. Gov't Code §81.003; State Bar of Texas, Staff Report to the Sunset Advisory Commission, Jul. 29, 1978, 325, (May 29, 2024),

<https://www.sunset.texas.gov/public/uploads/files/reports/State%20Bar%20of%20Texas%20Staff%20Report%201978%2066%20Leg.pdf>, [hereinafter "1978 Sunset Report"].



multi-faceted approach to fostering high standards of attorney conduct in the legal profession's service to the public. The following are present players in the Texas attorney discipline system:

**The Commission for Lawyer Discipline** (“the Commission”) was created as a standing committee of the Bar, composed of six attorney members appointed by the Bar president, and six non-attorney members appointed by the Court. The Commission, with advice and consent of the Board selects a Chief Disciplinary Counsel (“CDC”) to serve as administrator of the Bar’s grievance procedures.<sup>85</sup> The Commission becomes the client of the Chief Disciplinary Counsel for every Complaint not dismissed after an investigatory hearing, resolved through a negotiated judgment entered by an Investigatory Panel, or dismissed by the Summary Disposition Panel.<sup>86</sup> By statute, the Commission provides an annual report available online that includes statistics on the disposition of grievances filed, investigated, dismissed, and sanctioned; race and gender data; and barratry information, including the CDC’s cooperation with other agencies.<sup>87</sup>

**The Chief Disciplinary Counsel** (“CDC”) is the attorney selected to perform disciplinary functions for the Bar, and upon request, may investigate and prosecute suits to enjoin members, nonlicensees, and nonmembers of the state bar from the practice of law.<sup>88</sup> The CDC’s office operates with 96 full-time employees, including 33 lawyers (four regional counsel, four classification attorneys, one rules attorney, two ethics helpline attorneys, and one public affairs counsel), 13 investigators (plus one vacancy), four office managers, one budget/human resources coordinator, three data analysts, and 40 legal and administrative support staff (plus one vacancy). The office is organized into four regions with each regional office managed by a Regional Counsel and responsible for the investigation and prosecution of disciplinary matters within its region. The office also operates the Attorney Ethics Hotline to answer attorney questions about their ethical obligations under the Rules. While the answers are informal and not binding, most attorneys find collaborating with ethics experts helpful in determining the best response. In 2022-2023, ethics attorneys returned 5,290 calls ranging from the simple to complex, requiring hours of research and discussion.<sup>89</sup>

**District Grievance Committees** consist of at least nine members, two-thirds of which must be Texas licensed attorneys in good standing and one-third public members, nominated by the board director for the associated district, and appointed by the Bar President.<sup>90</sup> Grievance Committees function in three roles: a Summary Disposition Panel, Investigatory Panel, and Evidentiary Panel.<sup>91</sup>

**The Board of Disciplinary Appeals** (“BODA”) consists of twelve lawyer members appointed by the Court to hear certain attorney discipline cases and to promote consistency in interpretation and application of the Disciplinary Rules and Procedural Rules. The Rules

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<sup>85</sup> Tex. Gov’t Code §81.0876.

<sup>86</sup> TRDP 2.14.

<sup>87</sup> Tex. Gov’t Code §81.076.

<sup>88</sup> Tex. Gov’t Code §81.002.

<sup>89</sup> CLD 2023 Annual Report, at 8.

<sup>90</sup> TRDP 2.02.

<sup>91</sup> TRDP 2.07.

empower BODA to hear seven types of attorney discipline and disability matters. BODA has original jurisdiction to transfer matters from one grievance committee to another, revoke fully- or partially- probated suspensions, compulsory discipline cases, reciprocal discipline cases, and disability cases. BODA has appellate jurisdiction over classification screening decisions by the CDC and judgments issued by Grievance Committee Evidentiary Panels. BODA has concurrent jurisdiction to hear petitions to terminate disability suspensions. BODA's current docket, recent opinions, annual report, member profiles, and other resources are available on their website.<sup>92</sup>

**The Client Security Fund Subcommittee** is a standing subcommittee of the Bar Board's Discipline and Client Attorney Assistance Committee, which considers applications to the Client Security Fund ("Fund") for those that can prove financial harm due to dishonest conduct of a Texas attorney. The Fund is administered by an employee of the CDC, who acts as administrator and legal counsel to the Fund, investigating and presenting requests to the Subcommittee. An online portal to submit and track fund requests is maintained at <https://csf.texasbar.com>.<sup>93</sup>

**The Ombudsman** is a full-time position of the Bar who reports directly to the Court; is selected by members of the Court; and independent of the Bar, Board, Commission, and Chief Disciplinary Counsel.<sup>94</sup> The Ombudsman receives complaints from the public and attorneys about the attorney discipline system; reviews grievances to determine whether proper procedures were followed; answers questions about the attorney discipline system, accessing the system, and availability of other programs; and reports annually to the Board and Court. The Ombudsman cannot intervene in any disciplinary matter; draft a complaint for anyone, advocate for anyone, or reverse a disciplinary finding.<sup>95</sup> Between Sept. 1, 2022 and Aug. 31, 2023, the Ombudsman received 799 inquires.<sup>96</sup>

**The Advertising Review Committee** ("ARC") is another standing committee of the Bar with nine attorney members and three public members. ARC was created to ensure attorney compliance with the Lawyer Advertising Rules of the Texas Disciplinary Rules of Professional Conduct and to review all public media advertising and written solicitation communications submitted for review. It ensures representations to the public are not false or misleading and is an avenue for resolving matters before reaching the CDC. Failing to file a non-exempt ad violates the Rules and is subject to fine. Failure to make corrections outlined by the committee is subject to forward to the CDC. The Advertising Review Portal is available through an attorney's My Bar Page and includes instructional videos and information, with Texas being the first state bar in the nation to provide such an accessible offering for advertising review.<sup>97</sup>

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<sup>92</sup> The Board of Disciplinary Appeals, (May 29, 2024), <https://www.txboda.org>

<sup>93</sup> The GOC covered the Fund in greater depth in its 2022 report at [https://www.txgoc.com/\\_files/ugd/531469\\_457040b687cd4a83a835ee56721c2d26.pdf](https://www.txgoc.com/_files/ugd/531469_457040b687cd4a83a835ee56721c2d26.pdf)

<sup>94</sup> Tex. Gov't Code §81.0882.

<sup>95</sup> Tex. Gov't Code §81.0883.

<sup>96</sup> 2023 Ombudsman Report at 4.

<sup>97</sup> Legal Talk Network: State Bar of Texas Podcast, Kennedy Mitchell Report, *New Innovations!-The Advertising Review Portal for Texas Attorneys*, Nov. 1, 2021, (May 29, 2024), <https://legaltalknetwork.com/podcasts/state-bar-texas/2021/11/new-innovations-the-advertising-review-portal-for-texas-lawyers/>.

**The Unauthorized Practice of Law Committee** (“UPL Committee”) is a standing committee of the Bar, composed of nine members appointed by the Court, of which three must be non-attorneys.<sup>98</sup> The UPL Committee seeks the elimination of the unauthorized practice of law, including by suing in the name of the committee, recommending methods to prevent the unauthorized practice of law, and keeping the Court and Board informed on related matters.<sup>99</sup> The UPL Committee may establish local committees to assist, but according to its website <http://www.txuplc.org>, it is plagued with vacancies, lacking appointments and volunteers to assist.

**The Committee on Disciplinary Rules and Referenda** (“Rules Committee”) consists of three attorneys and one non-attorney appointed by the Bar president, along with four attorneys and one non-attorney appointed by the Court.<sup>100</sup> The Rules Committee is to review and report on the adequacy of the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure, and oversee the initial process for proposing rule changes.<sup>101</sup> After a prescribed system for review, discussion, public hearing, committee vote, Board vote, and membership vote, the Court may by majority vote to approve or reject a proposed rule.<sup>102</sup> Since their creation in 2017, the Rules Committee successfully completed two Rules Referendums, with bar membership approving all twelve amendments or rule proposals in April 2024.<sup>103</sup>

**The Committee on Professional Ethics** (“Ethics Committee”) consists of nine members appointed by the Court.<sup>104</sup> The Ethics Committee expresses opinions on the propriety of professional conduct not currently pending before a court of this state, disclosing its rationale and whether based on disciplinary rules or ethical considerations.<sup>105</sup> It may also recommend amendments or clarifications on the Disciplinary Rules and Procedure Rules.<sup>106</sup> The Ethics Committees opinions are not binding on the Court.<sup>107</sup>

**The Law Practice Management Committee** (“LPM Committee”) is a standing committee of the Bar concerned with “programs, publications, and other activities conducive to the efficient, ethical management of the delivery of legal services; the delivery of legal services at reasonable prices, with sufficient return to ensure the viability of the professional; and increasing the management knowledge and skills of the members of the Bar.”<sup>108</sup> In 1995, the Bar formally

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<sup>98</sup> Tex. Gov’t Code §81.103.

<sup>99</sup> Tex. Gov’t Code §81.104.

<sup>100</sup> Tex. Gov’t Code §81.0872.

<sup>101</sup> Tex. Gov’t Code §81.0873.

<sup>102</sup> Tex. Gov’t Code §81.0879.

<sup>103</sup> The GOC believes the legislative and rule changes creating the Committee on Disciplinary Rules and Referenda and related procedures in response to the 2017 Sunset Act was one of the most productive changes for improved self-regulation of the Bar, and commends the Committee on their work thus far.

<sup>104</sup> Tex. Gov’t Code §81.091.

<sup>105</sup> Tex. Gov’t Code §81.092.

<sup>106</sup> Tex. Gov’t Code §81.093.

<sup>107</sup> Tex. Gov’t Code §81.092.

<sup>108</sup> State Bar of Texas, Law Practice Management Committee, (May 29, 2024), <https://www.texasbar.com/AM/Template.cfm?Section=ConsideraStateBarCommittee&Template=/CM/HTMLDisplay.cfm&ContentID=44962>.

established the Law Practice Management Program, which while initially focused on solo and small firm practitioners on questions of day-to-day practice, has evolved to address emerging challenges in contemporary law practice. In 2016, Law Practice Management was combined in one department with Texas Bar Books, and in 2020, Texas Bar Practice launched, a robust website where attorneys, their staff, law students, and others interested may access law practice management and legal publications.<sup>109</sup>

**Texas Young Lawyers Association** is the “public service arm” of the State Bar of Texas.<sup>110</sup> To fulfill its mission, TYLA publishes pamphlets, guides, articles, podcasts, videos, and programming for lawyers and the public. In 2023, TYLA updated their “TYLA Pocket Guide: Grievance and Malpractice 101” for attorneys, available on their website.<sup>111</sup> This pocket guide provides lawyers with the top five areas of law for grievances and the top five rule violations alleged in grievances. The guide further outlines a step-by-step overview of the grievance process, tips on avoiding a grievance, tips on responding to a grievance, and answers frequently asked questions about receiving a grievance. The guide provides an instructive one-page ‘Processing a Grievance Flowchart’ exhibiting the sequential steps of the grievance process to any lawyer who finds themselves the subject of a grievance.<sup>112</sup>

**The Grievance Oversight Committee** (“GOC”), while not a participant in the grievance process (as covered above), holds a unique place of required interface with each player. Almost every participant, as part of its duties, is tasked with making recommendations to the Court for improvements to the system. From the CLD’s perspective, it is frequently rule or procedure changes they notice would be helpful in the daily course of administering the grievance system; for the Ombudsman, recommendations are based on the complaints and inquiries received. The GOC however, specifically meets with each participant and pursues all available stakeholders and interested parties, benefitting from the non-participatory stance, and able to coalesce the varied, and sometimes conflicting ideas and viewpoints of participants.

## **THE GRIEVANCE PROCESS AND ALTERNATIVES**

Even before someone files a complaint about an attorney with the CDC, they are subtly asked whether that is the correct solution to their problem and offered links to a variety of other possible solutions.

### **The Client Attorney Assistance Program (“CAAP”)**

The Bar is required to establish a confidential voluntary mediation and dispute resolution procedure to attempt to resolve minor differences referred by the CDC and to coordinate with other programs.<sup>113</sup> The Bar’s response to that requirement is CAAP. As covered above, CAAP

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<sup>109</sup> Access Texas Bar Practice here: <https://www.texasbarpractice.com/>

<sup>110</sup> Texas Young Lawyers Association, (May 29, 20224), <https://tyla.org/>, [hereinafter “TYLA”]

<sup>111</sup> TYLA, TYLA Pocket Guide: Grievance and Malpractice 101, (May 29, 2024), <https://tyla.org/wp-content/uploads/2018/10/45071-TYLAGrievanceMalpractice23web.pdf>.

<sup>112</sup> The GOC commends TYLA for committing to update dated grievance process materials and recommended the Flowchart also be available as a stand-alone document with easy access by attorneys.

<sup>113</sup> Tex. Gov’t Code §81.072(E).

staff also operate the Grievance Information Helpline, aiming to facilitate communication between clients and their attorneys to resolve minor concerns or to direct callers to the most appropriate resource for their concern. CAAP cannot help if a grievance is pending (unless the CDC in their discretion refers the matter to CAAP). CAAP cannot take grievances, provide legal advice, look into the underlying case, or take any action to remove or replace and attorney. CAAP cannot recover fees. In 2022-2023, CAAP received 18,643 calls, 7,622 emails, 844 Discretionary Referrals, and 1,026 disputes.<sup>114</sup> Over 80% of referrals and disputes were resolved.<sup>115</sup> As outlined above, the GOC recommends expansion of the CAAP program.

### **Fee Dispute Resolution**

Likewise, before filing a grievance, the website outlines that a grievance cannot resolve a fee dispute, suggests ways of resolving the dispute – including through CAAP, points complainants to eight local bar associations that provide fee dispute processes, and a longer list of dispute resolution centers across the state. These are typically low-cost alternative dispute resolution and mediation centers. By statute, the Bar must establish a standard fee dispute resolution procedure that may be used by bar committees or other organizations.<sup>116</sup> While some of the local bar associations have the rules for their program posted, it is unclear whether these are based on a standard procedure provided by the Bar, and it is not listed as a local bar service.<sup>117</sup>

### **Complaint**

If neither of those options are successful or appropriate, there is a link to the complaint form. The complaint form is available in English or Spanish and may be submitted online, or via fax or mail. The PDF English version is seven pages long, and among the many other instructions and questions included asks whether the complainant has tried CAAP. With legislative changes in 2023 regarding from whom a complaint about an attorney will be considered, the site is specific that only the latest form may be used, which collects the tracking information to determine whether the complainant will pass this scrutiny. The complainant signs that they swear and affirm that the information is true and correct to the best of their knowledge.

### **Classification**

Once submitted, the CDC employs a small group of classification attorneys in Austin trained to look at the four corners of the complaint and determine whether on its face it alleges something that--if true--could violate the Rules.<sup>118</sup> If not (or if not filed by the right person), the complaint is dismissed as an inquiry and the attorney receives a letter in the mail letting them know that it was filed and dismissed. For the 2022-2023 bar year, before the addition of dismissing based solely on

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<sup>114</sup> CLD 2023 Annual Report, at 7.

<sup>115</sup> *Id.*

<sup>116</sup> Tex. Gov't Code §81.112.

<sup>117</sup> State Bar of Texas Local Bar Services, (May 29, 2024),

<https://www.texasbar.com/AM/Template.cfm?Section=LocalBarServices1&Template=/CM/HTMLDisplay.cfm&ContentID=29973>.

<sup>118</sup> Decades ago, this process was more diffuse. Concerned that classification was not uniform spread among the grievance committees across the state, and in response to the 1990 Sunset Report, classification became consolidated to hired staff in one location.

who filed the complaint, 69% of complaints were dismissed at this stage as inquiries.<sup>119</sup> On dismissal, the complainant can amend and refile or appeal to BODA. According to BODA's report for 2022-2023, 20% of dismissals chose to appeal, and of those, BODA agreed with the CDC's assessment 94% of the time, overturning 6%.<sup>120</sup> As covered above, the impact of the legislative changes to classification is so far minimal in the first eight months of data.

### **Investigation and Determination of Just Cause**

For those not dismissed as inquiries, or those reversed on appeal, they are elevated and officially classified and called Complaints. An investigator is assigned, and the attorney informed and provided 30 days to respond.<sup>121</sup> Within 60 days of the response deadline, the CDC must determine whether there is just cause to believe that the attorney violated the Rules.<sup>122</sup> If the CDC chooses to send the case to an Investigatory Hearing Panel, the deadline is extended to 60 days after the hearing.<sup>123</sup>

### **Summary Disposition**

After investigation, the CDC forwarded 66% of Complaints to Summary Disposition Panels in 2022-23 recommending dismissal.<sup>124</sup> As a Summary Disposition Panel, the Grievance Committee considers the Complaint, evidence, and information from the CDC without the complainant or respondent present to determine whether the panel agrees with the initial assessment of the CDC that no just cause exists and the Complaint should be dismissed. If just cause is found, the case will need to be heard by a different Grievance Committee. In the 2022-23 bar year, the grievance committees agreed with the CDC 99.57% of the time, forwarding only seven of 1,661 Complaints.<sup>125</sup>

### **Investigatory Hearing**

When the CDC chooses to extend the investigation phase and put the matter before an Investigatory Panel, the complainant and attorney are informed and invited to both appear via Zoom for further discussion and investigation. As Investigatory Hearing Panel, the Grievance Committee hears from the respondent and complainant, asks questions, and then dismisses the parties to deliberate.<sup>126</sup> The Grievance Committee determines whether there is just cause to believe that the attorney violated the Rules, and if so, may choose to recommend a range of sanctions. In 2022-2023, 335 cases were resolved after an investigatory hearing panel with 189 of those resolved through a negotiated sanctions.<sup>127</sup>

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<sup>119</sup> See CLD 2023 Annual Report, at 12.

<sup>120</sup> The Board of Disciplinary Appeals, Report 2023, 17 (May 29, 2024), <https://www.txboda.org/sites/default/files/PDFs/2023%20Annual%20Report%20Final.pdf>.

<sup>121</sup> TRDP 2.10.

<sup>122</sup> TRDP 2.12(A)(1).

<sup>123</sup> TRDP 2.12(A)(2).

<sup>124</sup> See CLD 2023 Annual Report, at 14.

<sup>125</sup> *Id.*

<sup>126</sup> TRDP 2.12(F).

<sup>127</sup> CLD 2023 Annual Report, at 14.

### **Grievance Referral Program (“GRP”)**

Among the recommended sanctions if just cause is found, the Grievance Committee may suggest referral to the Grievance Referral Program when applicable.<sup>128</sup> Created in 2007, the program is designed to provide corrective assistance for low-level misconduct.<sup>129</sup> In exchange for completing an individually-tailored program, the attorney may have the Complaint dismissed.<sup>130</sup> If the terms of the agreement are not completed, the Complaint resumes through the usual disciplinary process.<sup>131</sup> Frequently, attorneys are provided self-assessment tools to better evaluate areas of improvement in their practice.<sup>132</sup> In 2022-2023, 58 cases were successfully resolved through the GRP.<sup>133</sup>

### **Texas Lawyers Assistance Program (“TLAP”)**

One portion of GRP terms may be to contact the Texas Lawyers Assistance Program. As the Texas Lawyers Assistance Program is confidential and will provide no information to the CDC,<sup>134</sup> the attorney must provide confirmation that they complied with any rehabilitative terms in their judgement. TLAP, celebrating its 35<sup>th</sup> anniversary in 2024, contributes to the reduction in disciplinary actions when attorneys take advantage of their resources, preventing future ethical violations. While perhaps created with substance abuse prevention in mind, TLAP’s resources cover a broad range of topics including crisis fatigue, handling anxiety, depression, grief and loss, suicide prevention, and cognitive decline. Resources include articles, videos, counselors, group support, virtual options and in-person options.<sup>135</sup>

### **Law Practice Management**

Often, GRP terms may include making law practice management changes to prevent current practices from recurring or escalating. The Law Practice Management tools available through TexasBarPractice.com offer how-to’s on starting, maintaining, and growing a law practice, succession planning, technology, and winding down a law practice. The site also includes links to mentor opportunities, relevant Continuing Legal Education programming, and tools created by other groups or committees like those created by TYLA.<sup>136</sup>

### **Trial of the Complaint**

If just cause is found by the CDC or a Grievance Committee, the respondent attorney is given

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<sup>128</sup> TRDP 16.02.

<sup>129</sup> TRDP 16.01.

<sup>130</sup> TRDP 16.03(D).

<sup>131</sup> TRDP 16.03(E).

<sup>132</sup> Similar self-assessment programs may be found here:

<https://www.texasbar.com/AM/Template.cfm?Section=articles&Template=/CM/HTMLDisplay.cfm&ContentID=39388>

<sup>133</sup> CLD 2023 Annual Report, at 15.

<sup>134</sup> Memorandum of Understanding Regarding TLAP Confidentiality, the State Bar of Texas, and the Office of Chief Disciplinary Counsel, (May 29, 2024),

[https://www.texasbar.com/AM/Template.cfm?Section=Content\\_Folders&ContentID=56192&Template=/CM/ContentDisplay.cfm](https://www.texasbar.com/AM/Template.cfm?Section=Content_Folders&ContentID=56192&Template=/CM/ContentDisplay.cfm).

<sup>135</sup> Access TLAP resources here: <https://www.tlaphelps.org/>.

<sup>136</sup> Access Law Practice Management Resources here: <https://www.texasbarpractice.com/law-practice-management/>.

written notice of the allegations and rule violations.<sup>137</sup> The attorney has 20 days to determine whether they want to try the case before a District Grievance Committee or go to District Court, with or without a jury.<sup>138</sup> If there is no response, the case defaults to a Grievance Committee.<sup>139</sup> As an Evidentiary Panel, the Grievance Committee hears the case presented by the CDC and the respondent attorney.<sup>140</sup> The complainant may be a witness but is not a party to the case.<sup>141</sup> The CDC has the burden to prove its allegations by a preponderance of the evidence.<sup>142</sup> A court reporter records the proceedings.<sup>143</sup> The Evidentiary Panel sits as the tribunal, deciding all questions of fact and law and sanctions.<sup>144</sup> In 2022-23, 11% elected District Court, 24% elected Evidentiary Panels, and 65% defaulted into Evidentiary Panels.<sup>145</sup>

### **Client Security Fund**

The Client Security Fund ("CSF"), covered in depth in the Committee's 2022 Report, provides a safety net to clients harmed by their attorneys through theft or dishonest conduct, including failing to refund unearned fees or misappropriating settlement funds. The CSF holds more than \$3 million in its corpus, a portion of which is collected via restitution requirements of grievance judgements.<sup>146</sup> In 2022-23, \$1,119,552.66 in attorneys' fees were collected in restitution and 380 CSF applications resolved, resulting in \$892,449.72 in grants approved for victims of attorney misconduct.<sup>147</sup>

## **RECOMMENDATIONS**

Education must continue, and the GOC hopes this overview of players and process is helpful in seeing just how robust the system is, as well as the checks and balances and safety valves built in. As stated above, there needs to be more attention to broad recruitment to volunteer positions within the grievance system, and better attention by the entities with responsibility for the various appointments in ensuring positions are timely filled. Inform bar membership about opportunities to volunteer on grievance and other committees or how and when they can express an interest in serving, in every way possible: e-blast, Texas Bar Journal, social media, and personal invitation at local and specialty bar meetings. Numerous large national firms have also opened Texas offices in recent years and the State Bar should consider devoting resources to concerted outreach to attorneys at these new firms to educate them about Texas's self-governing bar and the importance of attorney participation to ensuring a vibrant Texas legal market operating at the highest ethical standards. Volunteering makes self-governance a reality, extends

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<sup>137</sup> TRDP 2.14(D).

<sup>138</sup> TRDP 2.15.

<sup>139</sup> *Id.*

<sup>140</sup> TRDP 2.17(L).

<sup>141</sup> *Id.* and TRDP 3.06.

<sup>142</sup> TRDP 2.17(M).

<sup>143</sup> TRDP 2.17(N).

<sup>144</sup> TRDP 2.17(P).

<sup>145</sup> CLD 2023 Annual Report, at 14.

<sup>146</sup> State Bar of Texas, Board of Directors Policy Manual, Sept. 2023, §3.08.02, (May 29, 2024), [https://www.texasbar.com/AM/Template.cfm?Section=Governing\\_Documents1&Template=/CM/ContentDisplay.cfm&ContentID=61720](https://www.texasbar.com/AM/Template.cfm?Section=Governing_Documents1&Template=/CM/ContentDisplay.cfm&ContentID=61720).

<sup>147</sup> CLD 2023 Annual Report, at 10.



knowledge, prompts self-evaluation, and improves the state and status of the profession all around.

## **CONCLUDING COMMENTS**

The GOC appreciates the continuing opportunity to assist the Court in its oversight of the attorney grievance process. With the explosive growth of artificial intelligence (“AI”) technologies and the flurry of activity as courts, law firms, agencies, and committees consider the possibilities and implications, the Committee is already engaging in stimulating conversations with stakeholders about effects on or benefits to the Texas attorney discipline system and will report as appropriate. The Committee stands ready to answer questions from the Court about this Report and to provide any additional research, resulting observations, and recommendations as the Court might find helpful or necessary.

OFFICE OF THE CHIEF DISCIPLINARY COUNSEL  
STATE BAR OF TEXAS  
GRIEVANCE FORM

**THREE WAYS TO FILE:**

1. ONLINE FILING AVAILABLE AT <http://cdc.texasbar.com>.
2. FAX FILING AVAILABLE AT (512) 427-4315
3. MAIL FILING TO P.O. BOX 13287, AUSTIN, TX 78711

**I. GENERAL INFORMATION**

**Before you fill out this paperwork, there may be a faster way to resolve the issue you are currently having with an attorney.**

If you are considering filing a grievance against a Texas attorney for any of the following reasons:

- ~ You are concerned about the progress of your case.
- ~ Communication with your attorney is difficult.
- ~ Your case is over or you have fired your attorney and you need documents from your file or your former attorney.

**You may want to consider contacting the Client-Attorney Assistance Program (CAAP) at 1-800-932-1900.**

CAAP was established by the State Bar of Texas to help people resolve these kinds of issues with attorneys quickly, without the filing of a formal grievance.

CAAP can resolve many problems without a grievance being filed by providing information, by suggesting various self-help options for dealing with the situation, or by contacting the attorney either by telephone or letter.

I have  I have not  contacted the Client-Attorney Assistance Program.

If you prefer, you have the option to file your grievance online at <http://cdc.texasbar.com>.

**In order for us to comply with our deadlines, additional information/documentation that you would like to include as part of your grievance submission must be received in this office by mail or fax within (10) days after submission of your grievance. Please limit your additional information to 25 pages. Information, including audio, video or image files, submitted on a USB thumb drive or flash drive must not exceed 25MB. Information received after the 10 day deadline will be returned and not considered, as well as information submitted on CDs, DVDs, cassette tapes or other unsupported media. Thank you for your cooperation in this matter.**

**NOTE: All questions on the grievance form must be answered completely.** If a question doesn't apply to your situation, you must state "not applicable" or "N/A." If you don't know the answer to a question, state that you don't know. **Do not leave any section blank.** Grievance forms that are not complete with required information will be automatically rejected and returned.

**II. INFORMATION ABOUT YOU -- PLEASE KEEP CURRENT**

1. TDCJ/SID # \_\_\_\_\_ Name: \_\_\_\_\_

Immigration # \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

2. Employer: \_\_\_\_\_

Employer's Address: \_\_\_\_\_  
\_\_\_\_\_

3. Telephone numbers: Residence: \_\_\_\_\_ Work: \_\_\_\_\_

Cell: \_\_\_\_\_

4. Email: \_\_\_\_\_

5. Drivers License # \_\_\_\_\_ Date of Birth \_\_\_\_\_

6. Name, address, and telephone number of person who can always reach you in the event that the Office of Chief Disciplinary Counsel needs to locate you. **\*Please note that confidentiality is not waived and this individual does not have the authority to contact the Office of Chief Disciplinary Counsel in order to obtain information about this grievance.**

Name \_\_\_\_\_ Address \_\_\_\_\_

\_\_\_\_\_ Telephone \_\_\_\_\_

7. Do you understand and write in the English language? \_\_\_\_\_

If no, what is your primary language? \_\_\_\_\_

Who helped you prepare this form? \_\_\_\_\_

Will they be available to translate future correspondence during this process? \_\_\_\_\_

8. Are you a Judge? Yes  No

If yes, provide Court, County, City, State: \_\_\_\_\_  
\_\_\_\_\_

9. Are you an attorney? Yes  No

If "yes," are you currently in litigation with the attorney named in this grievance?

Yes  No

### III. INFORMATION ABOUT ATTORNEY

Note: **Grievances are not accepted against law firms.** You must specifically name the attorney against whom you are complaining. A separate grievance form must be completed for each attorney against whom you are complaining.

1. Attorney name: \_\_\_\_\_ Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

2. Telephone number: Work \_\_\_\_\_ Home \_\_\_\_\_ Other \_\_\_\_\_

3. Have you or a member of your family filed a grievance about this attorney previously?

Yes  No  If "yes", please state its approximate date and outcome. \_\_\_\_\_  
\_\_\_\_\_

Have you or a member of your family ever filed an appeal with the Board of Disciplinary Appeals about this attorney?

Yes  No  If "yes," please state its approximate date and outcome.  
\_\_\_\_\_

4. Please check one of the following:

This attorney was **hired** to represent me.

This attorney was **appointed** to represent me.

This attorney was hired to represent **someone else**.

If this attorney represents **someone else**, please check one of the following:

I am a family member or a ward in a guardianship proceeding that is the subject of the grievance;

I am a family member of a decedent in a probate matter that is the subject of the grievance;

I am a trustee of a trust or an executor of an estate if the matter that is the subject of the grievance relates to the trust or estate;

I am the judge, prosecuting attorney, defense attorney, court staff member, or juror in the legal matter that is the subject of the grievance;

I am a trustee in a bankruptcy that is the subject of the grievance;

I have an interest in, or connection with, the attorney or the legal matter or the facts alleged in the grievance based on the following facts:

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If you hired the attorney, tell us how you met the attorney. Specifically, please provide details about how you came to know and hire this attorney. \_\_\_\_\_

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Please give the date the attorney was hired or appointed. \_\_\_\_\_

Please state what the attorney was hired or appointed to do. \_\_\_\_\_

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5. What was your fee arrangement with the attorney? \_\_\_\_\_

How much did you pay the attorney? \_\_\_\_\_

**If you signed a contract and have a copy, please attach.**

**If you have copies of checks and/or receipts, please attach.**

**Do not send originals.**

6. Are you currently represented by an attorney? Yes  No

If yes, please provide information about your current attorney \_\_\_\_\_

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7. Do you claim the attorney has an impairment, such as depression or a substance use disorder? If yes, please provide specifics (your **personal** observations of the attorney such

as slurred speech, odor of alcohol, ingestion of alcohol or drugs in your presence etc., including the date you observed this, the time of day, and location).

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8. Did the attorney ever make any statements or admissions to you or in your presence that would indicate that the attorney may be experiencing an impairment, such as depression or a substance use disorder? If so, please provide details.
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**IV. INFORMATION ABOUT YOUR GRIEVANCE**

1. Where did the activity you are complaining about occur?

County: \_\_\_\_\_ City: \_\_\_\_\_

2. If your grievance is about a lawsuit, answer the following, if known:

a. Name of court \_\_\_\_\_

b. Title of the suit \_\_\_\_\_

c. Case number and date suit was filed \_\_\_\_\_

d. If you are not a party to this suit, what is your connection with it? Explain briefly.

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**If you have copies of court documents, please attach.**

3. Explain in detail why you think this attorney has done something improper or has failed to do something which should have been done. Attach additional sheets of paper if necessary.

**Supporting documents, such as copies of a retainer agreement, proof of payment, correspondence between you and your attorney, the case name and number if a specific case is involved, and copies of papers filed in connection with the case, may be useful to our investigation. Do not send originals, as they will not be returned. Additionally, please do not use staples, post-it notes, or binding. Please limit your supporting documentation to 25 pages. Information, including audio, video or image files, submitted on a USB thumb drive or flash drive must not exceed 25MB. Information received after the 10 day deadline will be returned and not considered, as well as information submitted on CDs, DVDs, cassette tapes or other unsupported media.**

**Include the names, addresses, and telephone number of all persons who know something about your grievance.**



**V. HOW DID YOU LEARN ABOUT THE STATE BAR OF TEXAS' ATTORNEY GRIEVANCE PROCESS?**

- |  |  |
|--|--|
| <input type="checkbox"/> <b>Yellow Pages</b> | <input type="checkbox"/> <b>CAAP</b>     |
| <input type="checkbox"/> <b>Internet</b>     | <input type="checkbox"/> <b>Attorney</b> |
| <input type="checkbox"/> <b>Other</b>        | <input type="checkbox"/> <b>Website</b>  |

**VI. ATTORNEY-CLIENT PRIVILEGE WAIVER**

I hereby expressly waive any attorney-client privilege as to the attorney, the subject of this Grievance, and authorize such attorney to reveal any information in the professional relationship to the Office of Chief Disciplinary Counsel of the State Bar of Texas. I understand that it may be necessary to act promptly to preserve any legal rights I may have, and that commencement of a civil action may be required to preserve those rights.

Additionally, I understand that the Office of Chief Disciplinary Counsel may exercise its discretion and refer this Grievance to the Client-Attorney Assistance Program (CAAP) of the State Bar of Texas for assistance in resolving a subject matter of this Grievance. In that regard, I hereby acknowledge my understanding that such discretionary referral does not constitute the commencement of a civil action and that the State Bar of Texas will not commence any civil action on my part. I acknowledge that it is my responsibility to seek and obtain any necessary legal advice with respect to this matter. I also understand that any information I provide to the State Bar of Texas may be used to assist me and will remain confidential for purposes of resolving the issue(s) described above.

I understand that the Office of Chief Disciplinary Counsel maintains as confidential the processing of Grievances.

I hereby swear and affirm that I am the person named in Section II, Question 1 of this form (the Complainant) and that the information provided in this Grievance is true and correct to the best of my knowledge.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

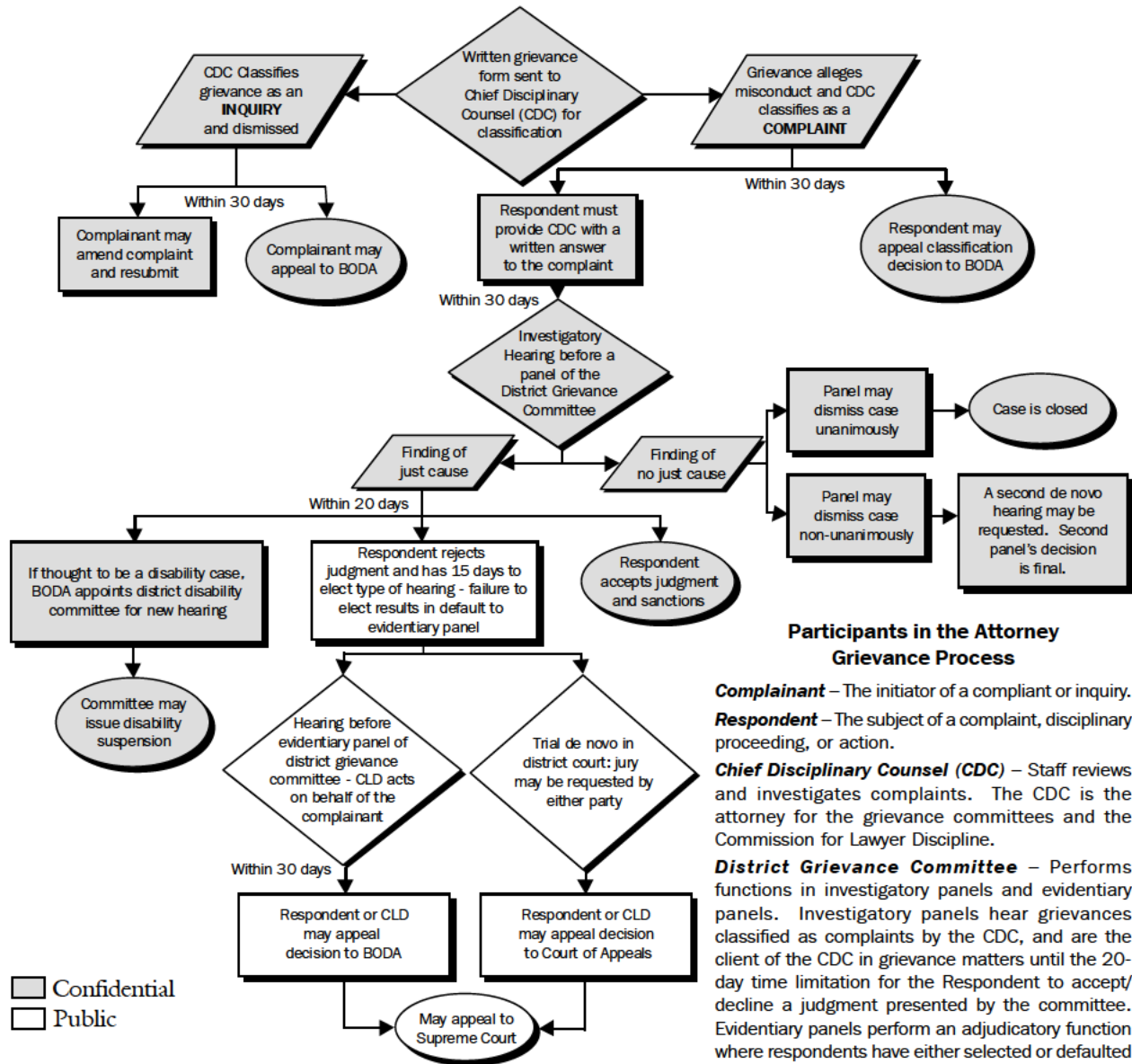
Printed Name: \_\_\_\_\_

To ensure PROMPT ATTENTION, THE GRIEVANCE SHOULD BE MAILED OR FAXED TO:

**THE OFFICE OF CHIEF DISCIPLINARY COUNSEL  
P.O. Box 13287  
Austin, TX 78711  
Fax: (512) 427-4315**



## Current Attorney Grievance Process



### Participants in the Attorney Grievance Process

**Complainant** – The initiator of a complaint or inquiry.

**Respondent** – The subject of a complaint, disciplinary proceeding, or action.

**Chief Disciplinary Counsel (CDC)** – Staff reviews and investigates complaints. The CDC is the attorney for the grievance committees and the Commission for Lawyer Discipline.

**District Grievance Committee** – Performs functions in investigatory panels and evidentiary panels. Investigatory panels hear grievances classified as complaints by the CDC, and are the client of the CDC in grievance matters until the 20-day time limitation for the Respondent to accept/decline a judgment presented by the committee. Evidentiary panels perform an adjudicatory function where respondents have either selected or defaulted into the evidentiary stage.

**Commission for Lawyer Discipline (CLD)** – Oversees the grievance process. The CLD is the client in proceedings where the grievance committee's jurisdiction has lapsed, and all original proceedings before BODA.

**Board of Disciplinary Appeals (BODA)** – A judicial body with original jurisdiction in compulsory discipline cases, reciprocal discipline cases, and motions to revoke probation. BODA has final appellate jurisdiction in classification decisions and acts as an intermediate appellate court for evidentiary panel judgments.

Confidential  
 Public

# BODA Classification Appeals Summary

## By Disposition

1995-2004\*

	04-05	03-04	02-03	01-02	00-01	99-00	98-99	97-98	96-97	95-96
Total classification decisions	2,630	3,014	3111	2,831	2,784	2,672	2,537	2,397	2,499	2,450
Average decision time (days)	14	12	14	14	12	13	13	12	11	11
Total reversal rate	8%	11%	12%	12%	9%	9%	11%	13%	13%	15%
Total complainant appeals	2,603	2,343	2,258	2,040	2,075	1,976	1,731	1,549	1,591	1,382
Complainant appeals reversed	8%	8%	7%	7%	4%	5%	7%	8%	8%	8%
Total respondent appeals**	5	671	785	791	723	696	806	848	908	1,068
Respondent appeals reversed	NA	23%	25%	25%	21%	18%	20%	20%	20%	23%

\* By fiscal year (6/1 to 5/31)

\*\* Respondent appeals discontinued for filings after 1/1/04