



ANNUAL REPORT

September 1, 2023 – August 31, 2024

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

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CREATION OF THE OFFICE, STATUTORY MANDATES, AND PUBLIC ACCESS

The Office of the Ombudsman for the Attorney Discipline System of the State Bar of Texas (Ombudsman) was created during the Sunset Review process for the 85th Legislature.¹ As the Texas Sunset Advisory Commission explained, the Ombudsman position was recommended along with other changes “to help improve efficiency and responsiveness for attorneys and the public, and help the Office of the Chief Disciplinary Counsel better do its job to monitor and take action against unethical attorneys.”² This was echoed by the Chief Disciplinary Counsel, who noted that “[a]lthough the Office of the Chief Disciplinary Counsel [was already] subject to oversight and accountability, the [Texas] Legislature established the position of ombudsman for the attorney discipline system as an additional measure.”³ The Texas Legislature codified the recommendation during the 85th Legislative Session, it went into effect on June 1, 2018, with the Texas Supreme Court’s adoption of amendments, and the current Ombudsman started on July 14, 2018.⁴ The statute makes it clear that the Ombudsman is:

- A source of information for the public – The Ombudsman is tasked with answering questions from the public on the grievance system’s operations, accessing the system, the filing of grievances, and the availability of other State Bar of Texas (State Bar) programs.⁵
- A monitor of the attorney discipline system – The Ombudsman is responsible for receiving complaints about the system and investigating complaints to make sure the proper procedures were followed by the State Bar.⁶ Also, the Ombudsman makes recommendations to the Supreme Court of Texas and the State Bar Board of Directors for improvements to the attorney discipline system.⁷
- Independent – The Ombudsman reports directly to the Supreme Court of Texas and is independent of the State Bar Board of Directors, the Commission for Lawyer Discipline, the Chief Disciplinary Counsel, and the Board of Disciplinary Appeals.⁸ The independence allows the Ombudsman to impartially evaluate any complaints from the public about the grievance system and provide reports to the Supreme Court of Texas as an outside party.
- Confidential – The Ombudsman cannot disclose any information, proceedings, hearing transcripts, or statements she receives, including documents from various State Bar departments, to any person other than the Chief Disciplinary Counsel.⁹

The Texas Legislature also made it clear in the statute that there are certain actions the Ombudsman cannot take regarding the attorney discipline system.

Namely, the Ombudsman is prohibited from:

- (1) “draft[ing] a complaint for a member of the public;

¹ See Staff Report with Final Results, Tex. Sunset Advisory Comm’n (Jun. 2017). A copy of the Staff Report with Final Results, redacted for relevancy, is included as Exhibit 1 to the Appendix.

² *Id.* at A7.

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

⁴ *See id.*

⁵ Tex. Gov’t Code § 81.0883(a). A copy of Tex. Gov’t Code §§ 81.0881 – 81.0885 is included as Exhibit 2 to the Appendix.

⁶ *Id.*

⁷ *Id.* at § 81.0883(a)(6).

⁸ *Id.* at § 81.0882(b).

⁹ *Id.* at § 81.0885(a).

- (2) act[ing] as an advocate for a member of the public;
- (3) revers[ing] or modify[ing] a finding or judgment in any disciplinary proceeding; or
- (4) intervene[ing] in any disciplinary matter.”¹⁰

Despite these statutory restrictions, the Texas Sunset Advisory Commission, the Texas Legislature, and those involved in the attorney disciplinary process trusted the Ombudsman to “provide an additional means to receive information and support regarding the attorney discipline system and an independent avenue to verify compliance with the grievance process.”¹¹ Ultimately, the Ombudsman was created to “foster further confidence in the attorney discipline system.”¹²

Based on the statutory mandates explained above and the overarching goals of increasing transparency, independence, and access within the attorney disciplinary system, the Ombudsman built a program focused on public customer service. Other than the enabling statute, the main source of public information about the Ombudsman’s office is its website, which explains the role of the Ombudsman, details what the Ombudsman can and cannot do for the public, lists contact methods, and gives useful links to resources within the State Bar and other disciplinary entities.¹³ Since the Ombudsman is an employee of the Supreme Court of Texas, the website was placed under the Bar & Education section of the Texas Judicial Branch’s webpage, with additional links placed on the State Bar’s and Supreme Court of Texas’ websites, including the Supreme Court of Texas’ FAQs page and the State Bar’s Contact Us, Grievance and Ethics Information, and File a Grievance pages.

PUBLIC INQUIRIES – CONTENT AND RESPONSES

Inquiry Content

The Ombudsman, whose office consists of only one person, received 797 inquiries from September 1, 2023, to August 31, 2024, which is consistent with the 799 inquiries received during the previous reporting period. As shown in the charts below, people contacted the office by phone, email, the State Bar website, referrals from the Supreme Court of Texas and the State Bar, mail, and facsimile. While the trend for the previous two reporting periods has been toward phone communication, this year phone contacts levelled off and email communications slightly increased. This 1.7% increase in emails received is more significant when viewed alongside the 7% decrease in emails observed during the 2022-2023 reporting period. Although any contact method is acceptable, the Ombudsman does prefer email contacts, as they are more efficient and the written responses typically provide the inquirers with a well of resources in writing for future reference. As such, the resurgence of email dominance is a welcome one that the Ombudsman will continue to nurture by giving inquirers an option to contact her through email when they call and are prompted to leave a voicemail message.

Although they continue to be a small number of inquiries at a combined 1.1% of total contacts, the referrals from the State Bar and the Supreme Court of Texas have proven to be vital outlets for the distribution of work among those in the attorney discipline system. Additionally, this puts inquirers in touch with an independent office specifically designed to handle their complaints or questions, which fosters continuity

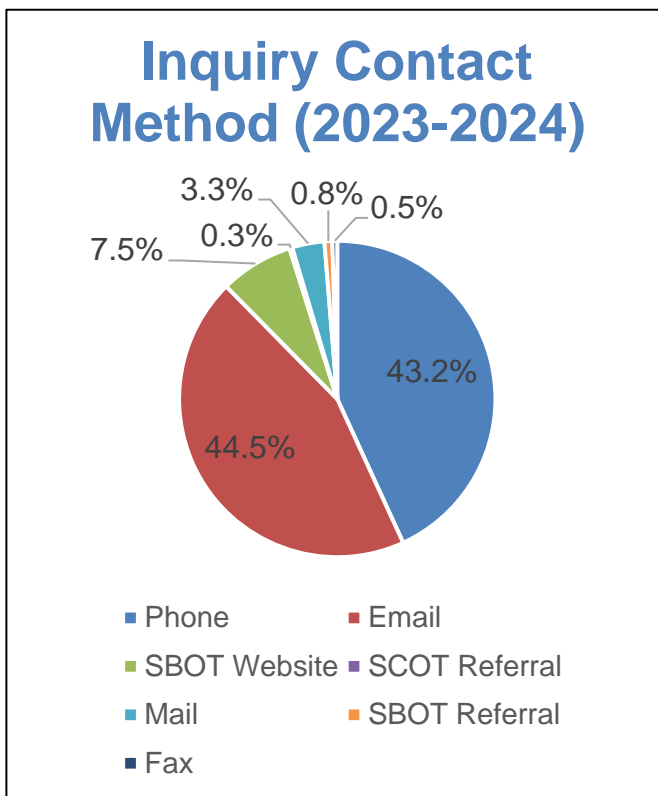
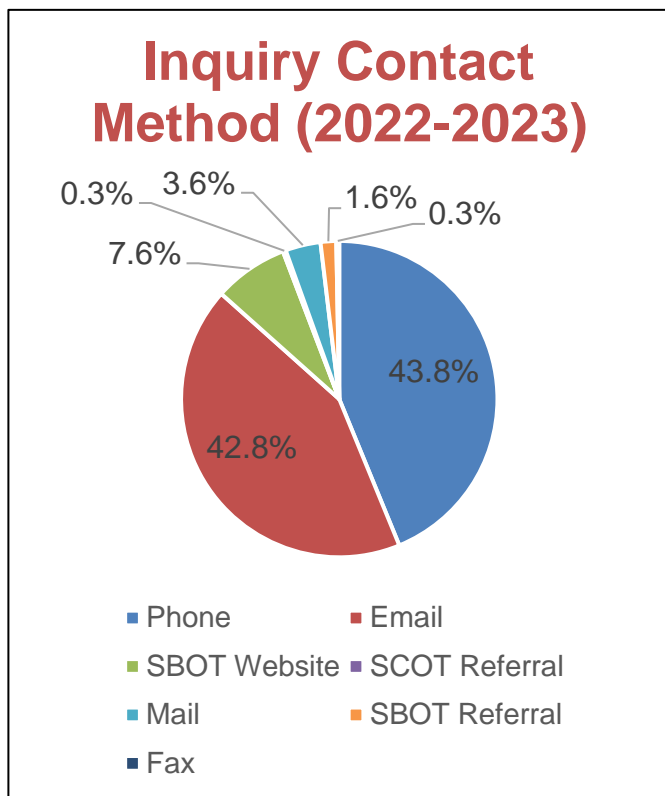
¹⁰ *Id.* at § 81.0883(b).

¹¹ Acevedo, *supra* note 3, at 445.

¹² *Id.*

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

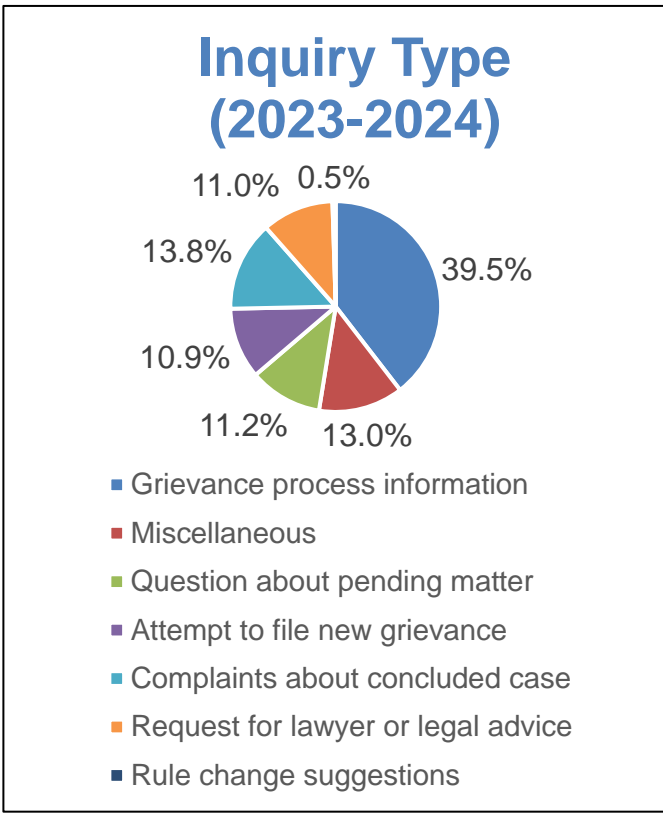
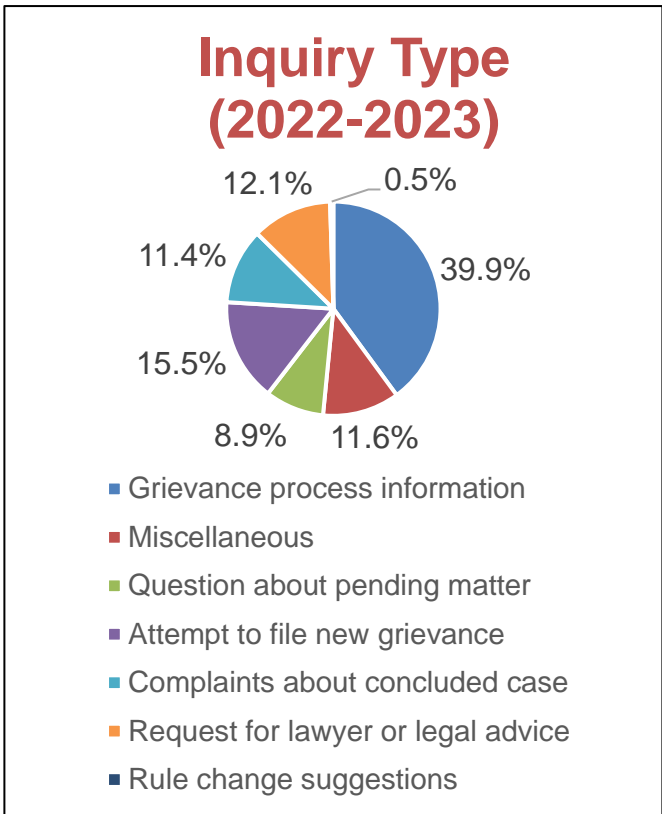
and more inquirer satisfaction. The hope is that the Ombudsman will continue to be a helpful outlet for others in the grievance process in the future.



As shown in the charts below, most people still contacted the Ombudsman to obtain more information about the attorney discipline system. Typically, the person is having an issue or disagreement with an attorney, and they contact the Ombudsman to hear what their options are. However, there were also several instances of researchers, academics, or other governmental agencies that contacted the office to get a more general sense of the position and how it fits into the overall grievance process that are included in this 40% of inquiries.

While last year’s report noted that many categories stayed stable, there were greater fluctuations this year, although those fluctuations were moderate. For example, individuals contacting the Ombudsman with questions about a pending matter saw a 2.3% increase during this reporting period. As discussed in more detail in the Common Complaints from the Public section below, the Chief Disciplinary Counsel’s office upgraded their systems this year, including the online submission system for grievances and internal case management databases, and there were some technical difficulties that resulted from the upgrade. This 2.3% increase is likely tied to these technical difficulties. While this category of inquiry was managed quickly and without much trouble in the past, most questions received this year required more resources to resolve due to the confusion caused by the new systems. As such, the hope is that as the technological issues are resolved, these inquiries will likewise decrease by next year. Another category that saw a similar increase this year were the inquirers contacting the Ombudsman to complain about a concluded case, which rose by 2.4%. These inquiries typically require the most time to review and respond to because they involve review and examination of documents. In this category, individuals have already gone through the grievance process, and usually their grievance was dismissed and their opportunity to appeal has already passed. To

fully discharge the Ombudsman’s duty in these matters, the office must request and review the Chief Disciplinary Counsel’s files on the specific grievance to ensure that proper procedures were followed. This often also mandates taking suggestions and complaints about the attorney discipline system from the inquirer. Therefore, while the number of inquirers who contact the Ombudsman with the main purpose of suggesting changes to the disciplinary system is a miniscule 0.5%, the overall number of recommendations received from the public is significantly greater.



On the other hand, individuals attempting to file a new grievance with the Ombudsman saw a significant 4.6% decrease during this period. While the outcome of these inquiries is often similar to an individual contacting the office for grievance process information, it is good to see a decrease nonetheless, as it may indicate that inquirers have a better understanding of the Ombudsman’s function. It is much easier to deal with an individual asking for information about their options at the State Bar of Texas than one who assumes that the Ombudsman can open an investigation based on their email demanding an attorney be disbarred. Likewise, the number of people contacting the office to request a lawyer or legal advice decreased by 1.1%. This category includes both members of the public seeking legal advice as well as attorneys contacting the office to ask whether a particular situation is ethical or would be sanctionable. For the former, I provide information about resources on the State Bar of Texas’ website for finding an attorney or free legal resources. For the latter, I refer them to the State Bar of Texas’ toll-free ethics helpline, which provides guidance to Texas lawyers if they are unsure about their ethical obligations in a particular situation.

Beyond the statistics collected and provided above, the Ombudsman also compiled information about: (1) the types of cases inquirers were contacting the Ombudsman about; (2) the relationship of the respondent-attorney to the inquirer; and (3) the alleged attorney behavior that is the subject of the inquiry. While it was

impossible to gather this information for every inquiry, the data yields some insight into the case types that most often result in grievances. Although criminal cases and family law cases continued to be the most common case type mentioned, making up 38% and 32% of the recorded case types, both categories saw slight decreases this year. On the other hand, the percentage of people who mentioned personal injury and probate cases increased by 7.2% and 2.3%, respectively. In cases where the inquirer made note of the target of their complaint, those who mentioned the respondent being an attorney of a relative or friend decreased by 5%, while those who noted they had no relationship with the respondent increased by 3.8%. This reporting period, inquirers complaining about an attorney not providing documents, ineffective assistance of counsel, and conflicts of interest all decreased, potentially indicating that those behaviors are on the decline. On the other hand, reports of overcharging increased by 4.6% and complaints of non-responsiveness rose to 43.8%, further cementing non-responsiveness as the issue most frequently mentioned by inquirers. As this problem endures, programs such as the Client Attorney Assistance Program and the Discretionary Referral Program, which help resolve communication issues between attorneys and their clients, become increasingly important.

Finally, as was also true last year, most inquirers were members of the public or current or potential complainants. After noticing this previously, the Ombudsman took particular note of when an inquirer identified themselves as an attorney. 6.8% of the individuals who contacted the Ombudsman this reporting period identified themselves as an attorney. This is almost 4 times as many as was reported last year, which could indicate that the office's interaction with other groups that include attorneys has increased its visibility within the attorney community and encouraged them to use the Ombudsman as a resource. These inquiries occurred for a wide variety of reasons, including attorneys wanting to know whether actions constitute misconduct, people asking for certified copies of their disciplinary history, and even instances of attorneys acting as a complainant or respondent in a pending or completed grievance. As with members of the public, most attorneys who contacted the office were not seeking to suggest improvements to the disciplinary system, but a few complaints and recommendations from attorneys were received. For example, one attorney contacted the office to suggest a stricter limit on the number of grievances an individual complainant can file against an attorney. He noted that there should be a rule like the one that limits vexatious litigants in civil cases. In the future, the Ombudsman hopes more attorneys will contact the office to offer their insights into the attorney discipline system, particularly since they hold a unique position in the grievance ecosystem.

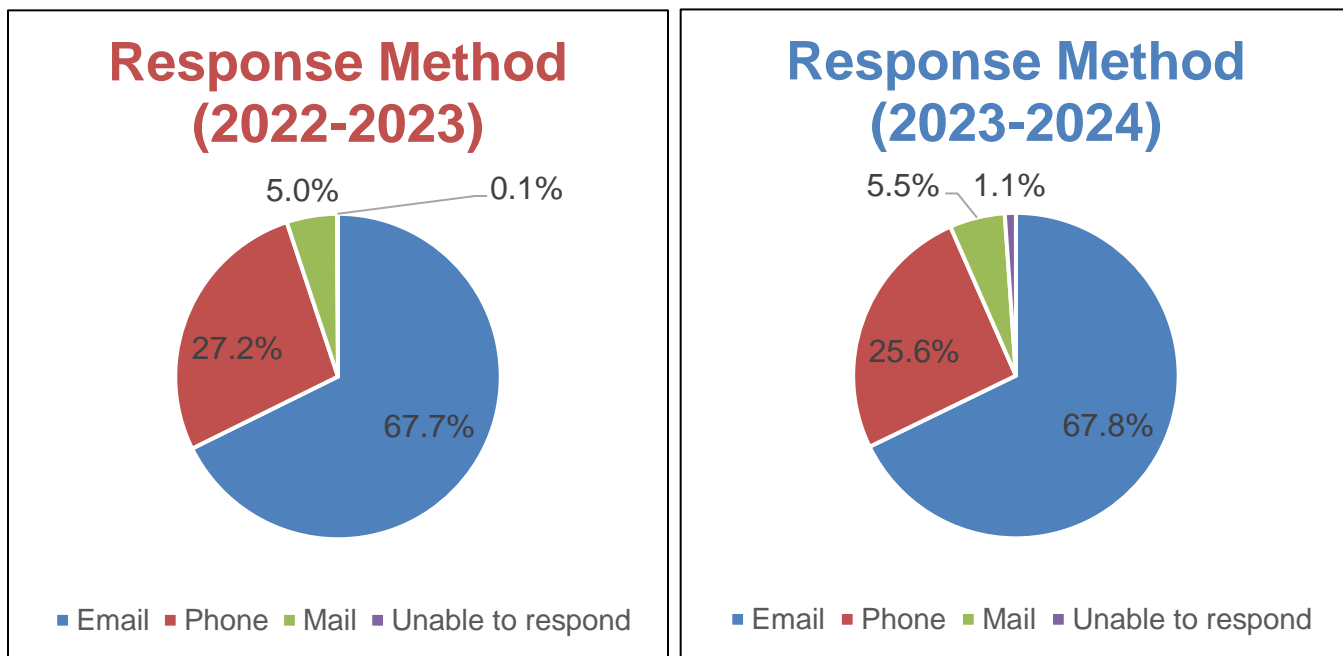
Response Content

Although each inquiry requires some customization, the Ombudsman has developed a standard response to inquirers who request general information about the attorney discipline system. The response includes information about the Client Attorney Assistance Program and how to file a grievance through the Office of the Chief Disciplinary Counsel. With both programs, the letter or email provide background details, contact information, brochures, and forms needed to enroll in the program or file a grievance.¹⁴

For some responses, it was also necessary to include information on other programs or agencies. For example, when someone wishes to file a complaint against a judge, the response would include information on how to contact the State Commission on Judicial Conduct. On the other hand, when a person is having trouble with his or her attorney and would like assistance in finding a new one, the response directs them to resources like the Lawyer Referral and Information Service or other resources matching the legal needs. Similarly, if an inquirer is solely concerned with the amount of fees charged by an attorney, the response

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

will include a link to information about local bar associations’ fee dispute committees. In the event the Ombudsman receives an inquiry from the Supreme Court of Texas or State Bar referral, the first step is always to send an acknowledgement letter to the inquirer. In that letter, the Ombudsman explains how she received the communication, why it was forwarded to her, and the role she plays in the disciplinary system.¹⁵ This standard response lets the inquirer know that their communication was received, provides context and contact information for the Ombudsman, and in the event follow-up is required, assures them that someone is looking into the issues.

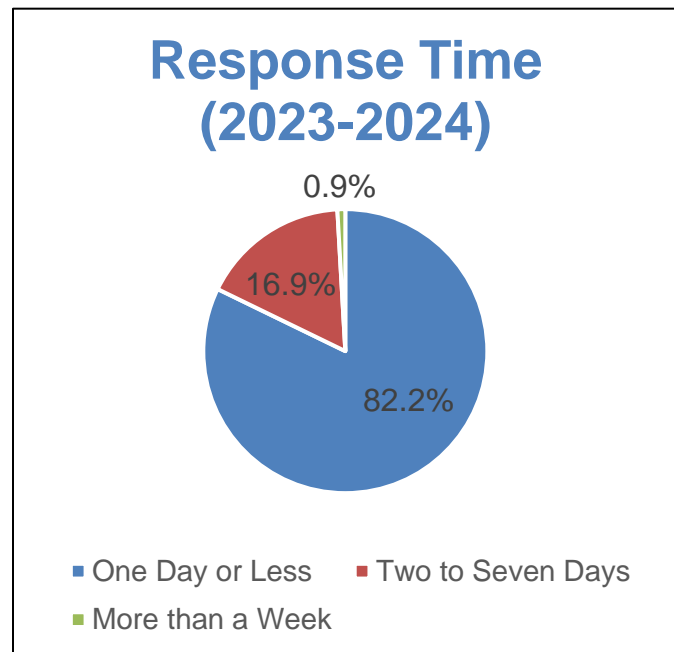
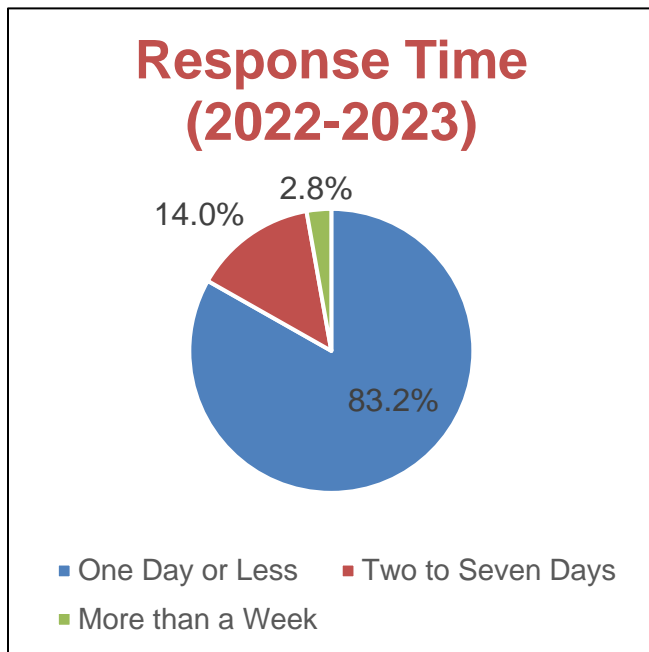


While inquirers may contact the Ombudsman through a wide variety of methods, the responses have all been by email, phone, or mail, as seen in the chart above. To provide a document that can be referenced at any time, the Ombudsman will often send an email including relevant information even after explaining the applicable resources and programs by phone. Although this often creates extra work for the Ombudsman, it reduces the likelihood that an individual will be a repeat player and should increase inquirer satisfaction. As such, the most common response method continued to be email at 67.7%. Similarly, some of the responses categorized as mail were initially discussed over the phone. In a reversal from last year, phone responses slightly decreased this reporting period while email responses remained steady. This hopefully indicates that the precipitous increase in phone responses, which almost always require more time and resources, has reached its peak. Like previous years, the Ombudsman was unable to respond to a small number of inquiries. Per the chart above, this constituted only 1.1% of all responses and often resulted because the individual left no contact information.

The Ombudsman makes every effort to respond to each inquiry as fully and efficiently as possible. This year, the average time to close an inquiry was 0.95 days, which continues the trend of improving response turnaround times every year. As demonstrated in the chart below, 82.2% of all inquiries were responded to and closed within a day and 99.1% of all inquiries were handled within a week. This maintained efficiency likely results from the expertise and specialized knowledge the Ombudsman has developed through the job

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

over the past 6 years and will hopefully continue in the future. It is worth noting that the times referenced in this chart include weekends and holidays, which necessarily increase the response time.



COMMON COMPLAINTS FROM THE PUBLIC

Transparency Concerns

Lack of transparency continued to be the most frequent complaint the Ombudsman received during this reporting period. As mentioned briefly in the Inquiry Content section above, the Chief Disciplinary Counsel’s office upgraded their system this year, including converting the database that they use to store and keep track of grievances filed by complainants. While this update will likely lead to increased efficiency and stakeholder satisfaction in the future, in the short term it has caused some confusion for inquirers. For example, the system’s mechanism for tracking internal deadlines regarding filed grievances was disrupted, leading many inquirers to contact the Ombudsman’s office to ask about the status of their grievances. While this was not uncommon during previous reporting periods, there was a marked increase this year, and the notification delays cited by complainants were generally greater than before. In a particularly challenging period, some grievances filed online were not received, leading to understandable anger and frustration. The Ombudsman often heard from these complainants months after they filed their grievance and after several attempts to contact the Chief Disciplinary Counsel’s office with no success, so they often required time and finesse to close satisfactorily. Shortly after the Chief Disciplinary Counsel’s office realized the error, they were able to direct complainants to a single person to handle the issue and have them resubmit the grievances, but there were some complainants who expended considerable effort to get their grievance properly filed and processed. At a minimum, this technological error necessarily reset the classification period and extended the grievance process.

Beyond the acute issues created by the technology upgrade, the Ombudsman continued to field complaints about the alleged secrecy and inscrutability of the grievance process. Specifically, complainants noted that they do not understand how the process works, their role in the discipline system, and the attributes of a successful grievance. In that vein, some inquirers (particularly those with disabilities) decried the lack of resources to walk complainants through the grievance form and help them fill it out. Additionally, inquirers

commented that investigators and attorneys within the Chief Disciplinary Counsel’s office did not give frequent or thorough updates on the status of the investigation or answer their questions concerning hearings quickly enough. Lastly, complainants continued to request a more thorough explanation of why their grievance was dismissed,¹⁶ noting that they only received a form letter with a surface explanation no matter when their grievance was dismissed.¹⁷

While most of the complaints noted above came from complainants, a few respondents did contact the Ombudsman to offer transparency critiques of the discipline system. Most notably, a respondent amid the grievance process noted that the hearing process was difficult for them to navigate, citing a lack of upfront information about what to expect. In particular, they were frustrated that it is not clear to respondents the practical differences between hearings in district court and those held before a grievance panel in an evidentiary hearing.

Complaints Related to Bias

As is probably alleged about all self-regulating entities, inquirers frequently commented that the grievance process, Chief Disciplinary Counsel’s office, and entire State Bar are biased in favor of attorneys. While not surprising, these complaints’ endurance makes them noteworthy. Specifically, complainants alleged that prior relationships between respondents and the investigators, grievance panel members, and State Bar board members improperly led to dismissals of their grievances. Some complainants claim that the grievance rules that went into effect in 2023 (as discussed in last year’s annual report) make the grievance process even more favorable to respondents, citing rules allowing respondents to immediately appeal classification upgrades to the Board of Disciplinary Appeals and the reduction of the types of complainants allowed. Specifically, at least one complainant noted that they think the policy to only accept the newest version of the grievance form and require each question be answered is particularly detrimental to incarcerated individuals trying to file grievances. Predictably, most inquirers critiquing the discipline system’s bias are complainants, but the Ombudsman also heard from a respondent alleging a grievance panel’s bias against them, noting that the panel chair limited their presentation of witnesses and appeared to be on the Chief Disciplinary Counsel’s side before the hearing even started. While the Ombudsman does not often hear from attorneys about this topic, their unique perspective is very welcome.

Other Complaints

Beyond complaints pertaining to transparency and bias, the Ombudsman’s office received recommendations concerning various other disciplinary policies and procedures. One of the most common miscellaneous complaints stems from problems caused by the Chief Disciplinary Counsel’s office’s system upgrade. Specifically, the change has caused the online submission system to be down and unavailable to complainants for long stretches of time this year. While the webpage gives complainants a date that it will become available again, often that date has had to be extended. As of the date of the date of this report,

¹⁶ A dismissal in the attorney discipline context means one of two things. If it was dismissed as an inquiry at the classification stage, it indicates “that the grievance alleges conduct that, even if true, does not constitute professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct.” Tex. Gov’t Code, *supra* note 5 at § 81.073(a)(2). If it was dismissed after it was classified as a complaint, it means that the body making the determination has found that “there is no just cause” *See id.* at § 81.075(b)(1).

¹⁷ Redacted examples of a typical dismissal letter sent to a complainant by the Chief Disciplinary Counsel’s office when a grievance is classified as an inquiry, a typical letter affirming dismissal sent by the Board of Disciplinary Appeals, a typical letter sent to a complainant after a Summary Disposition Panel finds there is no just cause, and a typical letter sent to a complainant after an investigatory hearing conducted by a District Grievance Committee finds that there is not enough evidence to continue are included as Exhibits 6, 7, 8, and 9, respectively, to the Appendix.

online filing is still unavailable. Inevitably, many complainants have contacted the Ombudsman specifically to complain about lack of online submission availability, with several noting that submitting grievances via mail or fax can often be difficult and costly for complainants. Some suggested that email submissions be allowed as an alternative at least while the online submission system is down. Another area that received miscellaneous complaints was the Grievance Referral Program (GRP). The GRP is similar to the Discretionary Referral Program discussed in last year's annual report in that it is "designed to address professionalism issues in minor misconduct cases"¹⁸ However, the GRP is strictly used in grievances that have reached the just cause stage of the discipline process rather than for grievances during classification.¹⁹ As such, this program is used to resolve grievances that would otherwise likely result in findings of misconduct in a more informal and cooperative manner. One complainant whose grievance went through the GRP contacted the Ombudsman to voice concerns that the program is unfair to complainants. In particular, she noted a lack of understanding of why her particular grievance was referred to the program and complained that there is no way for a complainant to object to their grievance's enrollment in the GRP. Lastly, the Ombudsman also received several comments about the questionnaire sent to complainants after their grievance is concluded. Specifically, the individual noted that the questionnaire should be provided earlier in the process so complainants and respondents can provide feedback as it occurs to them.

RECOMMENDATIONS FOR IMPROVEMENT

The Chief Disciplinary Counsel's office and State Bar process and investigate thousands of grievances per year and have used their collective experience to create an efficient and effective system to do so. However, any process including this one can be improved.²⁰ Below are recommendations for systemic improvements based on the comments and criticisms heard during this reporting period.²¹

[Recommendation 1: Provide Respondents with More Information About Evidentiary Hearings and District Court Trials](#)

As noted above, the Ombudsman has received extensive comments from respondents who are going through the grievance process this year. Beyond their general complaints of bias, the respondent's main concern was his or her lack of understanding of their hearing on the merits. Specifically, they were concerned about the lack of information provided to them prior to having to choose to have their grievance heard by a grievance panel in an evidentiary hearing or to have it tried in district court. While understanding that the Chief Disciplinary Counsel's office does represent the Commission for Lawyer Discipline (ostensibly the

¹⁸ Tex. R. Disciplinary P. 16.01, *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G app. A-1 (Vernon Supp. 1997).

¹⁹ *See id.* at 16.03(A).

²⁰ The issues created by the Chief Disciplinary Counsel's office's system upgrade appear to be the most prevalent problems facing the discipline system this past reporting period. However, given their technical nature and the fact that the Chief Disciplinary Counsel's office is already well aware of them, it would not make sense to make recommendations based on those problems. As such, the recommendations in this report focus on making improvements in other areas.

²¹ Note that this report makes different recommendations from those offered in the previous 3 reports, which were (1) enable communication and filing of grievances through email; (2) send acknowledgement communication to confirm receipt of grievances; (3) provide regular status updates to complainants during the investigation phase; (4) provide a more detailed explanation to complainants upon dismissal of grievances; (5) continue to allow communication via email; (6) provide more information about the process in the grievance form; (7) provide complainants and respondents with a way to indicate their preferred contact method; (8) provide complainants and respondents with more information about upcoming hearings; (9) for grievances upgraded for investigation, designate a point person to respond to questions from complainants and respondents; (10) emphasize the role of complainants as witnesses at the beginning of the grievance process; (11) ensure grievance participants are properly notified of recent procedural changes; and (12) provide instructions to lookup an attorney's profile on the grievance form. That does not mean that those recommendations are no longer valid but rather is simply reflective of the Ombudsman's office's desire to offer new proposals or different insights into the grievance process.

opposing party in this matter), it cannot hurt to make sure respondents are well informed of what to expect at the hearings to ensure that the process runs smoothly and both parties are prepared. The Ombudsman suggests that more information about both processes be sent to the respondent with the letter notifying them of the deadline to select the venue for their hearing on the merits.

Recommendation 2: Provide Complainants Whose Grievances Have Been Enrolled in the Grievance Referral Program with More Information About the Program

As discussed above, a complainant whose grievance was resolved through the GRP provided feedback to the Ombudsman this reporting period, noting their confusion about the program and why their grievance was chosen for it as opposed to resolved through a hearing. This office recommends providing complainants with more information about the program upon referral as well as updates during the process, such as reasons why the grievance was enrolled in the GRP, information about what tasks the respondent is required to complete, and the respondent's progress. While this will not change the ultimate outcome of the process, which the Chief Disciplinary Counsel's office hopes will result in the program's completion and the dismissal of the grievance, the Ombudsman expects that providing complainants with more information will demonstrate the GRP's value and make them feel that their concerns have been considered during the process.

CONCLUSION

In a reporting period that saw a fluctuation in many categories but a further stabilization of overall inquiries, the Ombudsman focused on advancing customer service and response times. While the Ombudsman found the attorney discipline system and programs that support it to be professionally and skillfully run, improvements can always be made to better serve the public and further its mission of overseeing the legal profession in Texas. The Ombudsman anticipates that the operation of its office can similarly make future improvements and strives to operate more efficiently and more effectively to assist the public and demystify the attorney discipline system.