

DEBRIEFING THE CHAIR

An insider's take on the Commission for Lawyer Discipline.

BY **RON BUNCH**

Immediate past chair is a great job. From that perspective, I offer the following unclassified comments.

When I started on the Commission for Lawyer Discipline, I knew very little about the discipline system. Likewise, if you ask a typical Texas attorney to name the entity responsible for prosecuting disciplinary violations, you're likely to hear: "the Chief Disciplinary Counsel." Although that's technically correct, it's only partly true. The Office of the Chief Disciplinary Counsel acts as the "prosecutor" in these matters, but the CDC's client is the Commission for Lawyer Discipline.

MEMBERS

The Commission for Lawyer Discipline—or the commission—is a standing committee of the State Bar of Texas consisting of 12 members, each serving a maximum of two 3-year terms. Six of the members are attorneys appointed by the president of the State Bar and six are public members appointed by the Supreme Court of Texas. The commission is diverse, both geographically and professionally. Of the six attorney members, the commission includes:

- a solo practitioner from Longview;
- a Travis County prosecutor;
- a large-firm partner in Houston;
- a presiding judge of a Harris County Civil Court at Law;
- a legal aid attorney in Hidalgo County; and
- a criminal defense attorney from Arlington.

The public members consist of:

- a retired assistant deputy chief U.S. probation officer who now works as an adjunct professor in El Paso;
- a retired partner with a multinational professional services and accounting firm in Dallas;
- a banking executive in McAllen;
- a licensed clinical social worker and juvenile probation officer in Randall County;
- a journalist and art director in Austin; and
- a retired registered nurse from the Houston area.

The commission meets monthly and analyzes about

750 cases each year. At a typical meeting, the members review pending disciplinary actions and determine settlement offers and authority or other relevant action to be granted in each case. In reviewing a disciplinary matter, the commission members consider many factors, including the respondent attorney's background, his or her prior discipline, the seriousness of the allegation, the harm to the client, and any attempts by the respondent attorney to provide restitution to the client. And, of course, the commission carefully considers the disciplinary rule violated and the facts of the violation. Most of the actual meeting time is spent debating and discussing various options, with the public members and attorney members participating equally. In my time on the commission, we were usually unanimous, but not always, and we occasionally had spirited discussions.

The commission oversees the performance of the CDC and provides an annual report, which can be found on the State Bar of Texas website (texasbar.com), to the board of directors. The annual report contains current statistics for each of the CDC's programs, including the Grievance Referral Program, as well as a breakdown of the number and type of grievances filed. It also includes updates to each program's activities over the past bar year.

HISTORY

The commission was created in 1991 by an order of the Supreme Court of Texas to address the need for consistency in disciplinary proceedings. Until the commission's creation, district grievance committees served as the sole clients of the prosecuting attorneys from the inception of a complaint through final disposition of a disciplinary action. This often resulted in a disparity in outcomes and sanctions. Currently, pursuant to Rule 4.06(A) of the Texas Rules of Disciplinary Procedure, the commission is the client for all disciplinary matters in which a just cause finding of professional misconduct has been made.

STATUTORY DUTIES

The commission has general oversight of the disciplinary system, the CDC's office, and the related budget. But the biggest part of the workload consists of a monthly review of pending disciplinary cases.

The commission has many duties and responsibilities, as specifically set forth in Rule 4.06:

- (A) to exercise all rights characteristically reposed in a client for all complaints not dismissed by a summary disposition panel;
- (B) to monitor, evaluate, and report to the board on the performance of the CDC;
- (C) to retain special or local counsel when necessary;
- (D) to recommend to the board such educational programs on legal ethics and lawyer discipline as it may consider advisable;
- (E) to recommend to the board an annual budget for the operation of the attorney professional disciplinary and disability system;
- (F) to meet monthly or at such other times, in such places, and for such periods of time as the business of the commission requires;
- (G) to draft and recommend to the board adoption of the commission's internal operating rules and procedures, which rules and procedures—as adopted by the board—will then be submitted to the Supreme Court for approval and, after approval, will be published in the *Texas Bar Journal*;
- (H) to recommend to the board the removal, for cause, of members of committees;
- (I) to refer to an appropriate disability screening committee information coming to its attention indicating that an attorney is disabled physically, mentally, or emotionally, or by the use or abuse of alcohol or other drugs;
- (J) to report to the board, at each regular meeting, and to the Grievance Oversight Committee, at least annually, on the state of the attorney professional disciplinary and disability system, and to make recommendations and proposals to the board on the refinement and improvement of the system;
- (K) to formulate and recommend to the board for adoption a system for monitoring disabled lawyers;
- (L) to notify each jurisdiction in which an attorney is admitted to practice law of any sanction imposed in this state, other than a private reprimand (which may include restitution and payment of attorneys' fees), and any disability suspension, resignation, and reinstatement;
- (M) to provide statistics and reports on lawyer discipline to the National Discipline Data Bank maintained by the American Bar Association;
- (N) to maintain, subject to the limitations elsewhere herein provided, permanent records of disciplinary and disability matters; and to transmit notice of all public discipline imposed against an attorney, suspensions due to disability, and reinstatement

ments to the National Discipline Data Bank; and
(O) to make recommendations to the board on the establishment and maintenance of regional offices as required for the expeditious handling of inquiries, complaints, and other disciplinary matters.

REHABILITATION AND RESTITUTION

Although its members believe the commission's first priority is to protect the public, they don't simply seek to punish attorneys who have committed professional discipline violations. Ideally, they want to help rehabilitate those lawyers and to provide restitution to wronged clients. For example, it is not unusual for settlement agreements to include requirements of additional continuing legal education in law practice management, or that a particular attorney be referred to the Grievance Referral Program for assistance—especially in cases of substance abuse or mental health issues. The commission members want to see an outcome in which all parties feel that they've been helped by the disciplinary process.

Clearly, commission members are busy with many responsibilities. However, in my time as a commission member and as chair of the commission, I found the members always willing to take the time to perform their duties thoughtfully. They arrived at the monthly meetings well prepared and ready to deliberate. Although my two terms of captivity on the commission have expired, I believe I left it in good hands. The current group of members will ensure that the disciplinary process is applied fairly, consistently, and in a manner that will both protect the public and assist attorneys in need of help. **TBJ**



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