

PUBLIC INTEREST

How the Office of Chief Disciplinary Counsel works with various State Bar entities to protect the people.

BY LINDA ACEVEDO

The Office of Chief Disciplinary Counsel of the State Bar of Texas investigates and prosecutes matters involving professional misconduct. Consequently, most attorneys seldom interact with the CDC, and, if they do, it is often when something has gone wrong. That, along with the fact that most media exposure involving the CDC focuses on high-profile disciplinary matters, means that many members of the State Bar are unaware of the positive impact that the CDC can have on Texas attorneys.

The CDC works closely with various State Bar entities to ensure that attorneys comply with the Texas Disciplinary Rules of Professional Conduct. Disciplinary judgments often contain provisions requiring attorneys to take steps to improve their practice and handle any mental health or addiction issues that may be present. In addition, the CDC is supported by programs that seek to resolve professional misconduct issues before they reach the grievance stage. The following entities greatly assist the CDC in maintaining the professional standards of the Texas legal community.

ADVERTISING REVIEW COMMITTEE

The ARC is responsible for reviewing lawyer advertisements and written solicitations. The ARC works to preapprove such communications, which reduces the number of grievances filed based on misleading ads. In the past bar year, the ARC reviewed more than 3,400 submissions. The ARC is also responsible for distributing non-filer notices to attorneys who have not filed an advertisement. Electronic media continues to be the focal point for the ARC. To further its educational outreach, the ARC provides a free one-hour ethics credit presentation focused on attorneys using social media to disseminate information about their legal services.

ATTORNEY ETHICS HELPLINE

The CDC maintains a toll-free Attorney Ethics Helpline designed to assist Texas attorneys who have questions about their ethical obligations to clients, courts, and the public under the TDRPC. The helpline is designed to give attorneys access to rules, ethics opinions, and case law so that they can make informed decisions about ethics issues. The



ethics helpline received more than 5,600 calls during the past bar year. The helpline number is (800) 532-3947.

CLIENT-ATTORNEY ASSISTANCE PROGRAM

CAAP is a statewide dispute resolution service designed to assist Texas lawyers and clients in resolving minor concerns, disputes, or misunderstandings within the context of the attorney-client relationship. The CDC and CAAP work together in an effort to identify and solve minor problems before they enter the disciplinary system. Ideally, this serves to free the CDC to focus on more serious disciplinary violations. During the 2012-2013 bar year, CAAP staff took action on behalf of Texas

legal service consumers 45,809 times—including 17,497 calls—and provided dispute resolution services for 1,159 Texas lawyer-client interactions. As criminal cases make up the majority of CAAP's client base, many defense attorneys who have participated in CAAP's outreach have expressed appreciation for its explanations to their clients about nondisclosure agreements, document retention policies, and criminal procedure. Despite challenges, CAAP was successful in re-establishing communication within the attorney-client relationship in 74 percent of its cases. CAAP can be reached by calling (800) 932-1900 or (800) 204-2222, ext. 1790.

CLIENT SECURITY FUND

The Client Security Fund provides relief to clients whose lawyers have failed to meet their obligations to pay restitution or—in the case of disbarment, resignation, or death of the lawyer—clients who can demonstrate post-judgment that their lawyers stole money from them or failed to refund an unearned fee. The CDC, through its Special Administrative Counsel, serves as the administrator and legal counsel to the fund. During the 2012-2013 bar year, the Client Security Fund issued grants totaling \$929,305, the most the State Bar of Texas has ever awarded in any one year. In addition, on June 18, 2013, the bar began offering applicants the ability to apply online at texasbar.com.

GRIEVANCE REFERRAL PROGRAM

Respondent attorneys are often referred to the GRP after the CDC finds that there is just cause to believe the attorney committed professional misconduct. The GRP helps identify and assist lawyers who have impairment or performance issues and who enter the disciplinary system as a result of minor misconduct. To be eligible, the following criteria must be met:

- The respondent has not been disciplined within the prior three years;
- The respondent has not been disciplined for similar conduct within the prior five years;
- The misconduct does not involve misappropriation of funds or breach of fiduciary duties;
- The misconduct does not involve dishonesty, fraud, or misrepresentation;
- The misconduct did not result in substantial harm or prejudice to the client or complainant;
- The respondent maintained a cooperative attitude toward the proceedings;
- The participation is likely to benefit the respondent and further the goal of protection of the public;
- The misconduct does not constitute a crime which would subject the respondent to compulsory discipline under Part VIII of the Texas Rules of Disciplinary Procedure.

In exchange for a dismissal of the underlying complaint by the commission, the respondent lawyer agrees to complete a remedial or rehabilitative program individually tailored to the respondent lawyer's needs. If the lawyer does not fully complete the terms of the agreement in a timely manner, the underlying complaint moves forward through the usual disciplinary process. During the 2012-2013 bar year, the GRP worked with more than 80 respondent attorneys, 56 of whom have already successfully completed the program.

The GRP presents an opportunity for respondent lawyers to address the issues that contributed to their misconduct, including issues of law practice management, poor communication skills, substance abuse, and impaired mental health. In this way, the attorney's practice is improved and the public is better protected from future misconduct by the lawyer.

LAW PRACTICE MANAGEMENT

The Law Practice Management Program primarily educates solo and small firm practitioners about how best to manage a law practice. Often, a referral to the bar's Law Practice Management resources will be incorporated as a term of a disciplinary judgment, as many complaints stem from a lawyer's lack of knowledge in the appropriate management of his or her law practice. The Law Practice Management Program resources include:

- Online classes on time management;
- Written materials on how to run a practice on a tight budget;
- The Texas Young Lawyers Association's "Survival Guide";
- Access to mentoring opportunities; and
- In-person seminars on finance for lawyers.

MINIMUM CONTINUING LEGAL EDUCATION DEPARTMENT

The MCLE Department ensures that attorneys comply with regulations and also approves courses for MCLE credit. Disciplined attorneys are frequently required to take a specified number of MCLE hours, and the CDC works closely with the MCLE Department to ensure that the attorneys comply and have access to relevant and useful courses.

PROFESSIONAL ETHICS COMMITTEE

The PEC is charged with the responsibility of expressing opinions to the propriety of questions of professional conduct, which arise from a request for opinion by a State Bar member or from the committee's own initiative.

To obtain an opinion from the PEC, prepare a written request that includes:

- A scenario of background facts in the hypothetical situation;
- The question(s) presented;
- A discussion of applicable authority. This may not need to be exhaustive, but should focus on specific disciplinary rules that may be involved and any case law, prior opinions, or opinions from other jurisdictions that may apply; and
- A statement that the question(s) presented is not in litigation.

Send your request to the following address, and it will be forwarded to the PEC:

Michelle Jordan, Attorney Liaison
 State Bar of Texas
 Office of Chief Disciplinary Counsel
 P.O. Box 12487
 Austin, TX 78711

The PEC will not issue an opinion on a particular lawyer advertisement but will consider general forms of lawyer advertising. Also, the PEC will not issue an opinion that concerns interpretation of legislation or interpretation of the unauthorized practice of law. These opinions are published in the *Texas Bar Journal*.

TEXAS LAWYERS' ASSISTANCE PROGRAM

TLAP assists lawyers challenged by substance abuse and other mental health disorders by offering a variety of educational, intervention, assessment and referral, and rehabilitative services. Because of the nexus between mental health disorders, such as chemical dependency and depression, and lawyer misconduct, the incidence of misconduct on the part of impaired lawyers is reduced when lawyers participate in recovery programs appropriate to their illness.

During the 2012-2013 bar year, 50 percent of calls to TLAP were from or about lawyers with an apparent sub-

stance abuse disorder, and the other 50 percent were from or about lawyers who were exhibiting moderate to severe symptoms of other mental health disorders, including depression, bipolar disorder, or an anxiety disorder. During that time, TLAP worked with 605 lawyers and 224 "concerned others," educating them about these disorders, coaching them through interventions, helping to develop treatment options, and arranging for re-entry support to prevent relapse. TLAP can be reached 24/7 by calling (800) 343-TLAP. By statute, all communications are confidential.

UNAUTHORIZED PRACTICE OF LAW COMMITTEE

The UPLC is charged with preventing the unauthorized practice of law, which harms the public and often results in the loss of money, property, or liberty. Although the CDC does not have jurisdiction over non-lawyers, it works closely with the UPLC by providing administrative support, giving referrals, and assisting when lawyers are involved with non-lawyers in the unauthorized practice of law. The UPLC can be reached by calling (512) 427-1341, or online at txuplc.org, where complaints can be filed.

The CDC's first mission is to protect the public from lawyer misconduct, but that mission isn't always advanced solely by punitive measures. With help from the aforementioned programs, the CDC can assist attorneys in improving their professionalism and addressing their mental health concerns, which benefits both the public and attorneys. **TBJ**



LINDA ACEVEDO

is the chief disciplinary counsel of the State Bar of Texas.

Texas Legal Directory "Official Directory of the State Bar of Texas" Your Blue Book of Attorneys since 1935

Federal Section
 State Section Exec & Legislative Branches, State Offices, Tax Depts
 Court Section State, county and local contact info
 Professional Associations
 County Map and County/City list
 Judicial Pictorial Section
 Board of Legal Specialization Section
 Areas of Practice Section
 Classified Section
 Roster Section
 Out of State Roster
 Biographical Section of participating law firms & individuals

\$68.00 4 vol set
 + P&H & Tax

Legal Directories
 PO Box 189000
 Dallas TX 75218
 (800) 447-5375



View your listing at: www.LegalDirectories.com "The Legal Search Engine"