



# Thumbnail Guide to Texas Ethics

The Texas Young Lawyers Association has prepared the following overview of the attorney discipline process, as well as some of the most frequently violated rules of professional conduct. To download the new TYLA pocket guide on malpractice and grievance, go to [tyla.org](http://tyla.org).

## OVERVIEW OF GRIEVANCE PROCEDURES

**Filing.** The grievance process begins when a complainant files a grievance form with the Office of Chief Disciplinary Counsel. A complainant may complete a grievance form through the online submission system at [cdc.texasbar.com](http://cdc.texasbar.com). The forms are also available in PDF format in English and Spanish at [texasbar.com](http://texasbar.com). To request a grievance form to be mailed, call (866) 224-5999.

**Classification.** Once a grievance is filed, the CDC has 30 days to determine if it alleges a violation of the Texas Disciplinary Rules of Professional Conduct or constitutes other professional misconduct. Grievances that allege professional misconduct are classified as complaints, and those that do not are classified as inquiries and dismissed. The CDC's decision to classify a grievance as an inquiry may be appealed to the Board of Disciplinary Appeals. See Tex. R. Disciplinary P. 1.06, 2.10.

**Response.** If a grievance is classified as a complaint, the CDC gives notice and a copy of the complaint to the attorney against whom the grievance was filed, and the attorney has 30 days to deliver a response. See Tex. R. Disciplinary P. 2.10.

**Just cause determination.** Within 60 days of the response deadline, the CDC investigates the complaint to determine whether there is just cause to believe that professional misconduct has occurred. If the CDC determines that there is no just cause to proceed with the complaint, the case is presented to a summary disposition panel consisting of local grievance committee members. If the panel accepts the CDC's determination, the complaint is dismissed. Otherwise, the panel votes to proceed on the complaint. See Tex. R. Disciplinary P. 2.12, 2.13.

**Election of forum.** If the CDC finds just cause—or if the summary disposition panel rejects a recommendation of dismissal—the attorney has 20 days to elect whether the complaint will be tried in district court or before an evidentiary panel consisting of members of the local grievance committee. If the attorney does not make an election, the complaint will be tried before an evidentiary panel. The lowest form of sanction, a private reprimand, is available only if the complaint is tried before an evidentiary panel. A jury is available only in district court. See Tex. R. Disciplinary P. 2.15, 3.06, 3.10.

**Trial.** After the attorney has made an election, the CDC files a petition in the name of the Commission for Lawyer Discipline. If the attorney has elected to have the complaint tried before an evidentiary panel (or has made no election), the petition is filed with the evidentiary panel. If the attorney has elected district court, the petition is filed with the clerk of the Supreme Court of Texas. Upon receipt of a disciplinary petition, the clerk of the Supreme Court of Texas promptly brings the petition to the attention of the Supreme Court. The Supreme Court promptly appoints an active district judge who does not reside in the Administrative Judicial District in which the respondent resides to preside in the case, and the clerk transmits a copy of the Supreme Court's appointing order to the CDC. In district court, either the Commission for Lawyer Discipline or the attorney may demand a trial by jury, although the judge still determines the appropriate sanctions. In either forum, the action must be set for trial on the merits within 180 days after the answer is filed. Trial can be avoided by an agreed settlement between the attorney and the commission.

**Sanctions.** There are eight available sanctions for professional misconduct, ranging in severity from a private reprimand to a term suspension to disbarment. Sanctions may also include restitution and payment of attorneys' fees. A private reprimand is not available in district court. See Tex. R. Disciplinary P. 1.06, 3.10, 15.11.

**Appeal.** The judgment of an evidentiary panel may be appealed to the Board of Disciplinary Appeals, and an appeal from the Board of Disciplinary Appeals may be taken to the Supreme Court of Texas. The final judgment of a district court may be appealed in the same way civil cases are generally appealed. See Tex. R. Disciplinary P. 2.24, 2.28, 3.16, 7.11.

## TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT GOVERNING COMMON COMPLAINTS

Of all the grievances filed against Texas attorneys each year, among the most common are allegations of neglect, failure to communicate, and withdrawal or termination of representation. The following is a quick summary of the rules governing those complaints.

**Neglect.** Rule 1.01(b) states that a lawyer “shall not: (1) neglect a legal matter entrusted to the lawyer; or (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.” Neglect is defined as “inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.” See Tex. Disciplinary R. Prof’l Conduct 1.01(b), (c).

**Failure to communicate.** Rule 1.03 requires a lawyer to “keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information” and also to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” See Tex. Disciplinary R. Prof’l Conduct 1.03.

**Withdrawal.** Although a lawyer is required to withdraw from representing a client in certain circumstances, Rule 1.15 provides that a lawyer may not otherwise withdraw unless: “(1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes may be criminal or fraudulent; (3) the client has used the lawyer’s services to perpetrate a crime or fraud; (4) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent or with which the lawyer has fundamental disagreement; (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services, including an obligation to pay the lawyer’s fee as agreed, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other

good cause for withdrawal exists.” See Tex. Disciplinary R. Prof’l Conduct 1.15(b).

**Termination.** Rule 1.15 provides that “[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled, and refunding any advance payments of fee that [have] not been earned.” The rule authorizes a lawyer to “retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.” See Tex. Disciplinary R. Prof’l Conduct 1.15(d).

## HELPFUL RESOURCES

**Client-Attorney Assistance Program.** The Client-Attorney Assistance Program is a statewide dispute resolution program and service of the State Bar of Texas. CAAP can assist clients and attorneys in resolving minor problems affecting their relationships when the issues do not involve misconduct under the Texas Disciplinary Rules of Professional Conduct. More information is available by calling (800) 932-1900.

**Attorney Ethics Helpline.** The State Bar of Texas maintains a toll-free Attorney Ethics Helpline, which is operated from 8 a.m. to 5 p.m., Monday through Friday. The helpline is designed to assist Texas attorneys who have questions about ethical obligations to clients, courts, and the public under the Texas Disciplinary Rules of Professional Conduct. The information given is designed to guide attorneys on how to access the rules, ethics opinions, and case law so that they can make informed ethical decisions. More information is available by calling (800) 532-3947.

**Professional ethics opinions.** Copies of the opinions of the Professional Ethics Committee for the State Bar of Texas are available on the website for the Texas Center for Legal Ethics at [txethics.org](http://txethics.org).

## WHERE TO FIND ETHICS RULES

The Texas Disciplinary Rules of Professional Conduct can be found in Article X, Section 9 of the State Bar Rules, which is located in the Government Code. See Tex. Gov’t Code, tit. 2, subtit. G app. A. The Texas Rules of Disciplinary Procedure also can be found in the Government Code. See Tex. Gov’t Code, tit. 2, subtit. G app. A-1. Both sets of rules are available at [legaethicstexas.com](http://legaethicstexas.com) and [texasbar.com](http://texasbar.com). **TBJ**