

What Texas Lawyers Need to Know About the Texas Grievance Process

Part one: classification and investigation.

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Practicing law in Texas is a privilege. The minimum standards of ethical conduct under which all attorneys must conform are set forth in the Texas Disciplinary Rules of Professional Conduct, or TDRPC,¹ as approved by the Texas Supreme Court.² In Texas, there are no exceptions—every lawyer licensed by the State Bar of Texas must comply with these rules and are subject to consequences when they do not.³

The reasons these rules apply universally are simple and straightforward. The practice of law places lawyers in positions of trust to handle the most personal and delicate problems clients may face. Licensed attorneys hold the proverbial keys to the courthouse. Trust in attorneys is essential not only for clients but also to preserve the integrity of the entire judicial system and the rule of law. Were the public to perceive that an attorney received special treatment, system-wide trust would be fundamentally undermined. The Texas Rules of Disciplinary Procedure, or TRDP,⁴ also adopted by the Texas Supreme Court,⁵ ensure that all Texas-licensed attorneys are treated equally and are subject to the same process when their conduct gives rise to grievances.

The bottom line is that the disciplinary process is set up to treat every complaint about every attorney with equal seriousness and to process each complaint the same way. Neither the Commission for Lawyer Discipline, or CFLD, nor its counsel, the Chief Disciplinary Counsel, or CDC, has discretion to deviate from the rules promulgated by the court—and for good reason. The rules provide a consistent framework for processing grievances to ensure that all complainants receive the same serious review and that no respondent receives special treatment, all while ensuring that no attorney will be inappropriately disciplined for conduct that does not violate the TDRPC.

While the disciplinary process set forth in the TDRPC and the TRDP has been the subject of numerous statewide reviews, audits, public hearings, and referenda, it remains seriously misunderstood by the public, many practitioners, elected officials, and even members of the judiciary. Misapprehensions about the process have led many to make incorrect assumptions about what happens during the disciplinary process and why. Part one⁶ of this article attempts to lay those misunderstandings to rest by explaining the process from classification through investigation, identifying the steps required by the rules, and explaining what happens at each phase of the process leading up to a resolution prior to litigation. Part two will focus on the process when an early

resolution following investigation cannot be reached. Part three will focus on the TDRPC and identify the most common types of conduct giving rise to disciplinary sanctions.

The Sources of Disciplinary Authority

The Texas Legislature granted power to the Texas Supreme Court to adopt the TDRPC and the TRDP.⁷ Both sets of rules are initially considered by the Committee on Disciplinary Rules and Referenda, or CDRR,⁸ a bar committee, and after approval by the directors of the bar, proposed rules are circulated to the members of the bar for comment and vote.⁹ Provisions approved by bar membership are presented to the court for adoption by administrative order if approved. Thus, the rules receive significant vetting before being adopted by the court.

The Starting Point for the Disciplinary Process—the Filing of a Grievance

A common misconception is that the CFLD initiates all disciplinary proceedings through its counsel, the CDC. In fact, the disciplinary process begins with actions undertaken independently of either—it is a wholly grievance-driven system.¹⁰ Pursuant to TRDP 2.10, a “grievance” begins with a written filing by a complaining party delivered to the CDC,¹¹ not by any action initiated by the CFLD through its counsel.¹²

Who may file a grievance

The term “grievance” is defined to include “a written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of Chief Disciplinary Counsel.”¹³ The term “professional misconduct” is defined as including, among numerous other things, “[a]cts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct.”¹⁴

Because Texas attorneys owe a professional duty to clients, the public, the legal system, and the legal profession,¹⁵ Rule 1.06(R) allows the written statement to be filed by anyone. In fact, to further the mission of the Texas attorney grievance system, the TRDP do not contain any privity requirements. While the majority of complaints are filed by clients, the CDC routinely sees complaints filed by family members of clients, parties who paid for a client’s representation, judges, prosecutors, opposing counsel, and third parties.

Classification upon filing of a grievance

After the filing of a grievance, the first step in the disciplinary process requires the CDC, within 30 days, to classify the grievance based on the contents of the writing.¹⁶ Based on the conduct alleged, the CDC must classify the grievance as an “inquiry,” a “complaint,” or a “discretionary referral.”¹⁷ The classification process requires that this review be based exclusively on the allegations contained within the grievance and whether, if taken as true, allege professional misconduct.

• **Inquiries**

TRDP 2.10(A) sets forth the characteristics of a grievance properly classified as an “inquiry.” A grievance will be classified as an “inquiry” if a review of the face of the filed grievance fails to show allegations of professional misconduct.¹⁸

If a grievance is classified as an “inquiry,” the matter will be dismissed and referred to the bar’s Client-Attorney Assistance Program, or CAAP.¹⁹ Complainants have certain appellate rights when matters are classified as “inquiries” and can appeal the dismissal to the Board of Disciplinary Appeals, or BODA.²⁰ BODA also reviews the classification decision based on the contents of the grievance. BODA independently analyzes whether the facts alleged therein, if taken as true, set forth acts constituting professional misconduct. If BODA affirms the classification decision,²¹ the complainant may amend the grievance one time by providing new or additional evidence to the CDC.²² If, on any refile, the CDC again classifies the grievance as an inquiry, the complainant may again appeal to BODA but no additional appeals will be allowed. If BODA reverses the classification decision, the matter thereafter will proceed as a complaint.²³

• **Complaints**

TRDP Rule 2.10(B) describes the process applicable to grievances classified as “complaints.”²⁴ A grievance shall be classified as a “complaint” if it constitutes “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.”²⁵ If a grievance is classified as a complaint, it will advance to the next phase of the disciplinary process described below.²⁶

• **Discretionary Referrals**

Finally, a grievance may justify classification as a “discretionary referral.”²⁷ These include grievances “that ha[ve] been determined upon initial classification to involve minor misconduct and [are] appropriate for referral to the State Bar’s Client Attorney Assistance Program.”²⁸ Within 60 days of the referral, CAAP will notify the CDC of the outcome of the referral, after which the CDC has 15 days to decide whether the grievance should be dismissed as an inquiry or pursued as a complaint.²⁹

Post-Classification Proceedings

Most grievances classified as “inquiries,” or referred to

CAAP for a mediated resolution, will ultimately be dismissed unless reclassified as “complaints,” leaving a small fraction to proceed on through the process. Grievances classified as complaints go forward subject to the following procedures.

Notice and a Right to Respond

When a grievance is classified as a complaint, the CDC must provide the respondent with a copy of the complaint and request a written response to the allegations in the complaint.³⁰ The respondent has 30 days to file a response after receiving notice from the CDC.³¹ The TDRPC imposes an independent obligation on attorneys to respond.³²

Just Cause

After requesting a response, the CDC conducts an investigation to determine whether “just cause” exists to support the allegations of professional misconduct raised by the complaint.³³ “Just cause” is defined as including “such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas, or probation.”³⁴

If the CDC fails to find just cause, the matter must be placed on the docket of a summary disposition panel, or SDP,³⁵ a panel of a local district grievance committee.³⁶ The CDC will present the case to the panel outside the presence of the complainant and the respondent based on the evidence, documents, or any arguments that may be appropriate. The SDP will then determine whether the matter shall proceed to litigation or be dismissed, a determination from which no appeal may be taken.³⁷

In further aid of its duty to find just cause, the CDC may set the complaint for an investigatory hearing, or IVH, before a panel of a local district grievance committee, where, after receiving testimony from the respondent, the complainant, and/or witnesses, the case will either be resolved through dismissal or an agreed sanction or will proceed to litigation.³⁸

Conclusion

Statistics bear out that the vast majority of Texas attorneys, at some point during their careers, will have to address a grievance and participate to some extent in the attorney grievance process. If the need arises, the first step must be to understand the procedural rules governing this process. An understanding of the rules and the steps in the process will help ensure that every lawyer has the opportunity to successfully navigate the disciplinary process.

Part two of this article will pick up with the election, litigation, and appeals process. Part three will highlight the types of misconduct giving rise to complaints that result in sanctions, with the hopes that a review of those examples will encourage attorneys to practice law in a manner that avoids grievable misconduct. **TBJ**

NOTES

1. See Tex. Disciplinary Rules Prof'l Conduct, *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, app. A.
2. Tex. Gov't Code § 81.024(b)(2).
3. Tex. Gov't Code § 81.071.
4. Texas Rules of Disciplinary Procedure, *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G, app. A-1.
5. Texas Government Code § 81.024(b)(2).
6. Parts one and two of this article parallel an article by the authors to be published in the State Bar of Texas Litigation Section's *News for the Bar*.
7. See Texas Government Code § 81.024(b)(2).
8. See Texas Government Code § 81.0872.
9. See *e.g.*, Texas Government Code §§ 81.0871 *et seq.* (procedures for reviewing rules and proposing revisions).
10. It is also a wholly mission-driven system with no agenda, political or otherwise, beyond protecting the public from unethical lawyers and providing a fair and efficient process for lawyers to defend themselves against allegations of professional misconduct.
11. See *also* Tex. Gov. Code § 81.073(a).
12. See TRDP 2.10.
13. See TRDP 1.06(A).
14. See TRDP 1.06(CC).
15. See TRDP 15.01(A).
16. Tex. Gov. Code § 81.073.
17. See TRDP 2.10(A-C).
18. See TRDP 2.10(A); see *also* TRDP 1.06(T), defining "inquiry" as "any written matter concerning attorney conduct received by the Office of Chief Disciplinary Counsel that, even if true, does not allege Professional Misconduct."
19. Tex. Gov. Code § 81.074.
20. Tex. Gov. Code § 81.073(b). TRDP 7.01, BODA is a statewide independent adjudicatory body of 12 attorneys appointed by the Texas Supreme Court; see *also* TRDP 2.10(A).
21. See TRDP 7.08(C).
22. See TRDP 2.10(A).
23. *Id.*
24. See TRDP 2.10(B).
25. See TRDP 1.06(G).
26. Tex. Gov. Code § 81.075(a).
27. See TRDP 2.10(c).
28. See TRDP 1.06(M).
29. See TRDP 2.10(c).
30. See TRDP 2.10(B).
31. *Id.*
32. See TDRPC 8.04(a)(8), prohibiting lawyers from failing to provide a response or other

information required by the TRDP.

33. See TRDP 2.12.

34. See TRDP 1.06(Z).

35. Tex. Gov. Code § 81.075(b)(1).

36. See TRDP 2.02., All members of the District Grievance Committees are nominated by the bar's elected directors and appointed by the bar's elected president (who collectively represent all members of the bar).

37. Tex. Gov. Code § 81.075(c).

38. See TRDP 2.12(F-G).



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