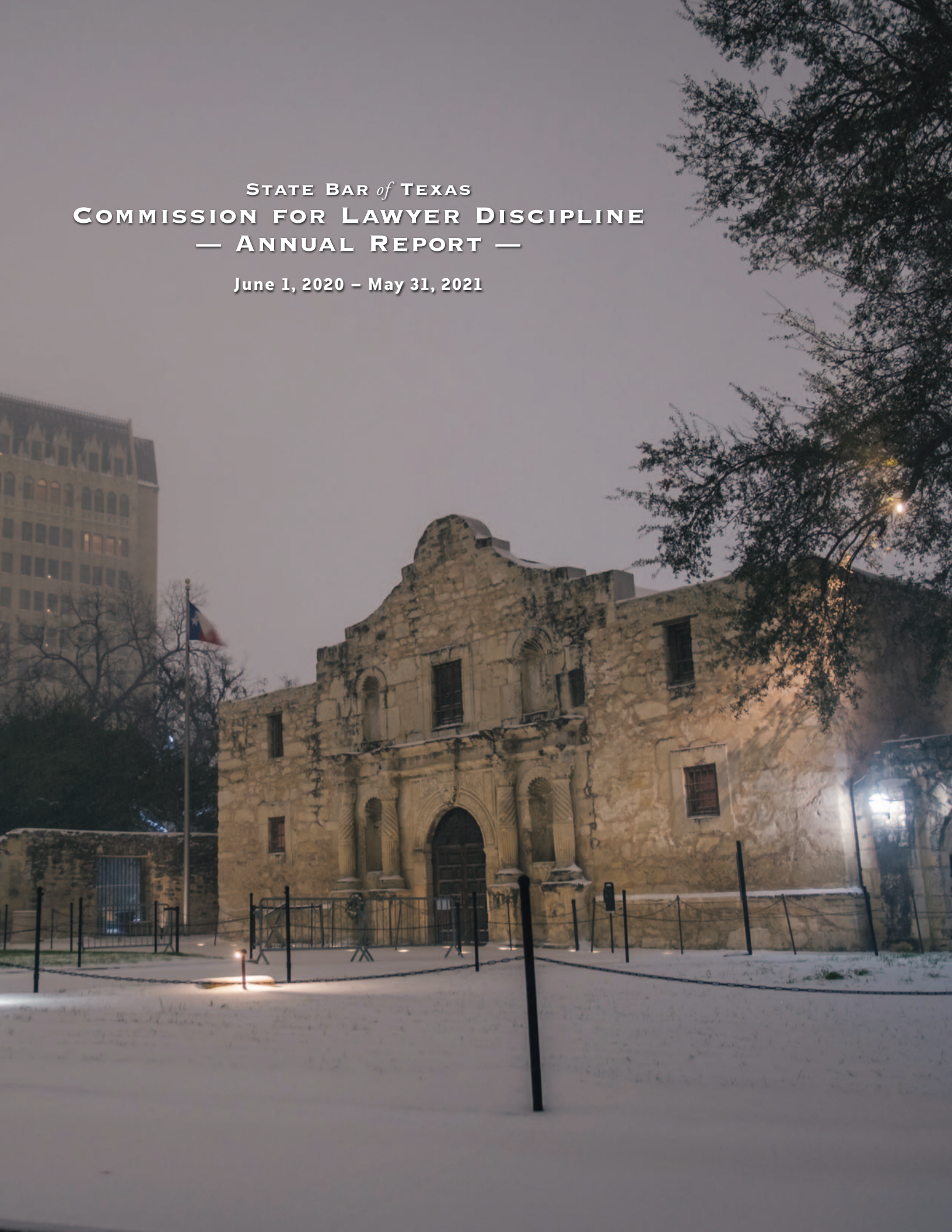


STATE BAR *of* TEXAS
COMMISSION FOR LAWYER DISCIPLINE
— ANNUAL REPORT —

June 1, 2020 – May 31, 2021



The Lawyer's Oath

"I do solemnly swear that I will support
the Constitutions of the United States,
and of this State; that I will honestly demean myself
in the practice of law; that I will discharge my duties
to my clients to the best of my ability;
and, that I will conduct myself with integrity
and civility in dealing and communicating
with the court and all parties.
So help me God."

FROM THE CHAIR OF THE COMMISSION FOR LAWYER DISCIPLINE

August 31, 2021

On behalf of the Commission for Lawyer Discipline, the information contained in this report is submitted on the attorney disciplinary system for the State of Texas for the period of June 1, 2020, through May 31, 2021. Some of the highlights from the past year are:



- The Commission successfully resolved 459 complaints through the imposition of 372 sanctions and collected \$308,002 in attorneys' fees;
- The Commission continued its efforts to combat professional misconduct in the area of immigration. The Office of Chief Disciplinary Counsel, or CDC, resolved 19 immigration-related complaints through the imposition of 11 sanctions and five referrals to the Grievance Referral Program.
- This past year, 16 barratry-related grievances were filed. Two of those grievances resulted in private reprimands. As of the end of the fiscal year, eight of those grievances remained under investigation;
- CDC assisted the Client Security Fund Subcommittee in considering 135 applications and approving \$483,699.91 in grants; and
- CDC held 354 investigatory hearings in 2020-2021.

The volunteer members of the Commission continued to strive to protect the public and to ensure the disciplinary process is as fair and as consistent as possible. It is an honor to serve with them.

A handwritten signature in dark ink, appearing to read 'Gena Bunn'.

Gena Bunn
Chair of the Commission for Lawyer Discipline

COMMISSION FOR LAWYER DISCIPLINE

The Commission for Lawyer Discipline is a standing committee of the State Bar of Texas and serves as the client in the Texas attorney discipline system. The Commission provides oversight to the Office of Chief Disciplinary Counsel, which administers the attorney discipline system. The Commission works closely with the State Bar Board of Directors and makes quarterly reports to the board on the administrative functions of the Commission as well as important issues within the grievance process. Professional responsibility and public protection are priorities of the State Bar of Texas, and oversight, funding, and support of the disciplinary system is in the best interest of all Texas attorneys as they provide ethical representation to their clients. State Bar directors play a critical role in the discipline system as they recommend both lawyers and non-lawyers to the State Bar president for appointment to local grievance committees. The Commission is composed of 12 members: six attorneys appointed by the president of the State Bar and six public members appointed by the Texas Supreme Court.

ATTORNEY MEMBERS



Gena Bunn, Chair, is a solo practitioner in Longview, where she practices criminal defense with an emphasis on criminal appeals. She served as chief of the Capital Litigation Division and the Postconviction Litigation Division at the Attorney General's Office, representing the state in federal court appeals of state court convictions. Bunn argued federal habeas corpus cases in the U.S. Supreme Court and the 5th U.S. Circuit Court of Appeals. She graduated from the University of Texas with a Bachelor of Journalism degree and received her J.D. from Baylor Law School.



Roberto "Bobby" Ramirez, Vice Chair, practices law in McAllen as a member of the Ramirez Law Firm. He is certified in personal injury trial law by the Texas Board of Legal Specialization. He previously served as chairperson for the District 12 Grievance Committee and as a member of the Texas Board of Legal Specialization. He received his undergraduate degree from the University of Texas at Austin and his J.D. from the University of Texas School of Law.

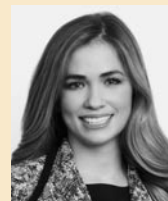


Magali Suarez Candler is certified in immigration and nationality law by the Texas Board of Legal Specialization and is a member of the American Immigration Lawyers Association. She serves on the AILA Executive Office for Immigration Review Liaison Committee. She is a past chair of the Texas Chapter of AILA and served in the Houston Executive Office for Immigration Review; on the State Bar of Texas Laws Relating to Immigration and Nationality Committee; and on the University of Houston Law Foundation Board.



Judge Monica A. Gonzalez is a retired county court at law judge who presided over family violence cases and was a municipal court judge for 12 years. She previously served as a prosecutor for the Bexar County Criminal District Attorney's Office. She also practiced law in the private sector and served on the State Commission on Judicial Conduct and on the District 10A Grievance Committee. She served on the Texas Supreme Court Committee on the Revision of the Texas Code of Judicial Conduct, the Texas Judicial Council Committee, the Bexar County Bail Bond Board, and the Mayor's Commission on the Status of Women — San Antonio. She received her J.D. from St. Mary's University School of Law.

Sally Lynn Pretorius is a shareholder in KoonsFuller and a past president of the Texas Young Lawyers Association. She is certified in family law by the Texas Board of Legal Specialization. Pretorius has been on the TYLA Board of Directors since 2012. She worked on TYLA projects including *Compassion Fatigue Awareness* and *Strength in Unity*, which received the Outstanding Public Service Project Award from the American Bar Endowment. Pretorius earned a bachelor's degree from St. Mary's University and her J.D. from SMU Dedman School of Law.



Michael S. Truesdale is an appellate lawyer with experience in prosecuting and defending appeals. In trial courts, he focuses on error identification and briefing/arguing issues with appellate implications. He has worked on cases before the Texas Supreme Court and appeals in nearly all Texas intermediate appellate courts. Truesdale has led appeals in other states' courts and in the 5th, 6th, and 7th U.S. Circuit Courts of Appeals and has authored briefs before the U.S. Supreme Court. He also advocates for the developmental expansion of appellate pro bono programs across the nation.



PUBLIC MEMBERS

Sheri Roach Brosier of Amarillo is a third-generation rancher, helping operate T.L. Roach & Son Allen Creek Ranch near Clarendon. She loves serving her community and volunteering for various civic organizations. She served on the District 13 Grievance Committee from 2001 to 2007.



Valery Frank of San Angelo was appointed to the Commission in 2018. A graduate of Angelo State University, Frank is a registered nurse and worked in critical care before retiring. A longtime advocate of health care, children's issues, education, and the arts, she has served on numerous boards, leading nonprofits and raising money for worthy causes. Prior to her appointment to the Commission, she served on the District 15 Grievance Committee for eight years.



Steve C. Henry previously served on the District 10-4 Grievance Committee in the San Antonio region. He retired from the U.S. Air Force after 26 years and recently retired from Texas A&M University AgriLife Extension service. Henry holds a B.S. from Southern Illinois University, a M.S. from National Graduate School of Quality Management at New England Institute of Business, and an M.B.A. and Ph.D. from Capella University. He is an advisory board member of the board of directors of the San Antonio Council on Alcohol & Drug Awareness.



Shailendra N. Thomas has experience in education extending more than 30 years, serving as elementary school teacher, instructional specialist, educational consultant, adjunct college professor, senior administrator/principal at Fellowship Christian Academy, Dallas co-director of the Texas Private Schools Association, and national accreditation commissioner for the Association of Christian Schools International. Thomas received her doctoral degree in educational leadership from Oral Roberts University and was head of school at Scofield Christian School. She currently serves as head of school at the King's Academy in Dallas and has co-authored several books.



Javier S. Vera is a CPA, a U.S.-licensed customs broker, and CFO of Roser & J. Cowen Logistical Services, Ltd., in Brownsville. He began his career working for Grant Thornton International and was a senior audit manager. He serves as an alderman for the town of Rancho Viejo. He has also served on various boards, nonprofits, and civic organizations. Vera served on the District 12 Grievance Committee from 2010 to 2015. Vera graduated from the University of Texas at Austin with a B.B.A. in accounting.



Joe David "J.D." Villa has been a maintenance services specialist at the Corpus Christi Army Depot since 2016. He previously was a leading petty officer in the U.S. Navy Reserve. From 1998 to 2011, Villa served honorably in the U.S. Navy, with stints aboard the USS Enterprise and the USS Harry S. Truman. He is also a city council member for the city of Rockport and served on the District 11 Grievance Committee for six years.



Ethics Helpline — 800-532-3947

The Ethics Helpline returned approximately 5,000 phone calls from Texas lawyers seeking advice regarding conflicts, confidentiality, safekeeping property, termination of representation, candor to the tribunal and fairness in adjudicatory proceedings, communicating with represented persons, fee-splitting or engaging in business with non-lawyers, advertising and solicitation, and the duty to report misconduct.

2020-2021 HIGHLIGHTS

IMPACT OF COVID-19 PANDEMIC

Due to the pandemic, CDC staff in all four regions spent the entirety of 2020-2021 working remotely, successfully navigating a variety of challenges related to remotely operating one of the country's largest and most complex attorney discipline systems.

Despite the challenges of operating in a remote setting, in 2020-2021, CDC continued to hold hearings — 354 investigatory, 41 evidentiary, 25 BODA, and five district court — in most cases utilizing available videoconferencing technology. Despite the challenges of moving to a remote format for hearings, grievance committee members and CDC staff reported that the remote format was preferable for a variety of reasons. For CDC staff, the remote format provided significant benefits in terms of not having to spend time and resources on travel and not having to transport bulky, voluminous case files. Given that grievance committee members could participate in hearings while at home or in their offices rather than having to take time off to commute to a hearing held elsewhere in their district, it was much easier to obtain a quorum, resulting in hearings that were less likely to be canceled.

The ability to conduct statewide grievance committee annual meetings and training sessions virtually resulted in a record number of attendees being able to participate compared to in-person trainings from years past.

Business practices developed and implemented due to the transition to remote operations resulted in a \$701,025 reduction in discipline system operating expenses as travel, copying, postage, professional services, and security costs were significantly reduced.

CDC revenues were not significantly affected by the pandemic. CDC collected \$308,002 in attorneys' fees in 2020-2021, exceeding projections.



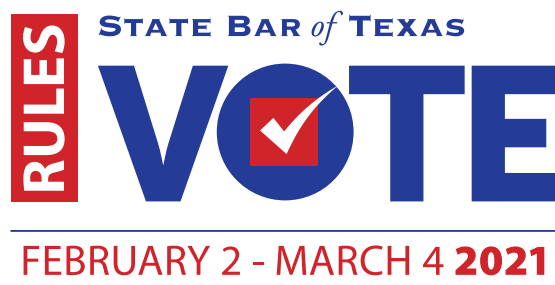
The Texas Law Center during the snowstorm of February 2021.

“After completing everything, more than learning, I just found it very helpful personally beyond my practice, so thank you for assisting me during the process.”

— GRP Participant

2021 RULES VOTE

The Committee on Disciplinary Rules and Referenda (CDRR) was created by the Texas Legislature in 2017 in Senate Bill 302. The CDRR consists of nine members, including seven attorney members and two public members. The Committee is responsible for overseeing the initial process for proposing changes to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure and ensuring multiple opportunities for input from lawyers and all Texans. In order for a proposed rule to be adopted under the process, it must be approved by the committee, the State Bar Board of Directors, State Bar membership, and the Texas Supreme Court.



On September 25, 2020, the State Bar board voted to petition the Supreme Court for a rules vote referendum on eight proposals. The court ordered the referendum, and State Bar members voted via electronic or paper ballot between February 2 and March 4, 2021.

The eight rule proposals addressed the following subjects:

- A. Scope and Objectives of Representation; Clients with Diminished Capacity
- B. Confidentiality of Information - Exception to Permit Disclosure to Secure Legal Ethics Advice
- C. Confidentiality of Information - Exception to Permit Disclosure to Prevent Client Death by Suicide
- D. Conflict of Interest Exceptions for Nonprofit and Limited Pro Bono Legal Services
- E. Information About Legal Services (Lawyer Advertising and Solicitation)
- F. Reporting Professional Misconduct and Reciprocal Discipline for Federal Court or Federal Agency Discipline
- G. Assignment of Judges in Disciplinary Complaints and Related Provisions
- H. Voluntary Appointment of Custodian Attorney for Cessation of Practice

On May 25, 2021, the Texas Supreme Court issued final approval of amendments to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. Texas lawyers had earlier approved the proposals as part of the first successful rules vote referendum in a decade. The court's order adopted each of those proposals, along with interpretive comments, effective July 1, 2021.

RETIREMENTS

During 2020-2021, CDC successfully filled 14 vacant positions with the entire interview, onboarding, and training process accomplished virtually. New hires included two office managers, two attorneys, three investigators, three legal assistants, and four legal secretaries. 2020-2021 also saw the departure of four long-time CDC employees — office managers Austrun Runnels and Karen Ferris and investigators Robin Landis and Jolene Bartlett — who all retired from the State Bar after decades of service.

AUDIT

CDC successfully underwent an external audit of the grievance system, which included a thorough review of the policies and procedures for the disciplinary system and the Client Security Fund. This resulted in an overall finding by the auditors that the CDC attorney grievance system is structured and functioning quite well.

“I do believe the GRP process will help me be a better attorney and run a better practice, which is always worth the time. Finally, I do appreciate the courtesy and professionalism of the Bar staff and I am grateful for the opportunity to fulfill the GRP Plan in lieu of litigating the underlying complaint.” — GRP Participant

A CLIENT SECURITY FUND PRIMER

Every state in the U.S. and province in Canada has some form of client protection fund. Texas’ fund is called the Client Security Fund and holds more than \$3 million in its corpus. Payouts are funded through an annual appropriation from the bar; interest on the corpus; and any restitution received. The Client Security Fund was established by the State Bar of Texas to restore client confidence when a Texas attorney abuses his position of trust in financial dealings with the client. It provides financial relief to clients whose lawyers have stolen money intended for the client, or failed to refund an unearned fee. The Client Security Fund remains a key piece of the CDC’s public protection mission and strives to provide meaningful assistance to clients who have been victimized by attorney misconduct.

ELIGIBILITY FOR GRANTS

In general, there are two main avenues for the eligibility of an applicant. The first is obvious attorney theft, such as when an attorney fails to turn over settlement funds to the client. The second is failure to refund unearned fees. This can include situations in which an attorney dies or becomes disabled, leaving behind insufficient funds in his or her attorney trust account, despite not having performed sufficient work to earn the fees that were paid.

In order to prove eligibility, an applicant must prove: (1) that his or her lawyer engaged in dishonest conduct; (2) that he or she was a client of that lawyer; (3) that the lawyer gained possession and control of the client’s money or property; (4) that he or she sustained a loss of money or property as a result of the dishonest conduct; (5) that he or she participated in the grievance process when required; and (6) the application was timely filed. These requirements are discussed in greater detail throughout the Client Security Fund Rules.

RECOUPING PAYMENT FROM ATTORNEYS

One challenge faced by members of the Board of Directors Client Security Fund Subcommittee each year is how to collect or recoup moneys paid out of the Fund from the respondent attorneys who have been the subject of grant applications. This is a fairly complex issue. There are two kinds of applications to consider, namely those in which the attorney: (1) was ordered to pay restitution; or (2) is disbarred, resigned, or deceased.

ORDER OF RESTITUTION

Approximately one-third of the fund's applications are filed as a result of attorneys who did not pay restitution after they were ordered to do so. In almost all cases, the attorneys were either disbarred via an underlying disciplinary judgment or a subsequent one. In many of the cases in which an attorney was disbarred or resigned in lieu of discipline, there was some kind of mental health issue or drug/alcohol addiction in play. Consequently, the attorneys are almost always insolvent and the likelihood of being able to collect is very low.

Additionally, about three-fourths of the disciplinary judgments were rendered by an evidentiary panel rather than a district court. There is no easy mechanism for converting an order of restitution by an evidentiary panel to a money judgment that can be enforced in district court without the Fund filing its own suit in district court.

DISBARRED/RESIGNED ATTORNEYS AND DECEASED ATTORNEYS

About two-thirds of the Fund's applications come from clients with an attorney that was disbarred or resigned without an underlying order of restitution as to the applicant, or an attorney that has died and left no money in a trust account, despite not having earned the retainer fee. When the attorney has died, the administrator conducts a search to ascertain whether there is an open estate that might be capable of paying the applicant. This very rarely occurs.

In these cases, there is no judgment on which to collect. This concern could be resolved with legislation that would specifically provide a mechanism for the Fund to obtain a money judgment that can be abstracted after a payout by the Fund.

"I believe that my participation in the GRP was beneficial both professionally and personally.... despite my initial skepticism and quasi-compelled participation, I found the material engaging and informative. Specifically, the resources provided reminded me of the significance that even small, often overlooked processes and systems can have concerning the day-to-day functionality of a law office and the benefits that can be achieved by regularly assessing the office as a whole, rather than simply focusing on independent files... In sum, my experience in the GRP was valuable, and I am sincerely grateful for the opportunity to participate in the same." — GRP Participant

RECOMMENDATIONS FOR LOSS PREVENTION

There are two loss-prevention efforts implemented by other jurisdictions that have proven effective in addressing the concerns raised above.

Payee Notification: This loss-prevention method requires insurance companies, when issuing settlement payments payable to both the claimant and their attorney, to provide written notice to the claimant at the same time payment is made to the attorney. Texas law currently does not require this; however, in August 2010, at the request of the State Bar of Texas, the Texas Department of Insurance issued a bulletin strongly encouraging all insurance companies to notify claimants of the amount and method of payment and the name and address of the party to whom the payment is made. This requirement was considered during the bar's recent Sunset process, but it was not enacted. At least 10 other states have some form of payee notification requirement.

Trust Account Overdraft Notification: This loss-prevention method requires attorneys to keep their attorney trust accounts at banks that notify the disciplinary authorities when an attorney trust account is overdrawn. Texas does not have such a requirement and is only one of four states without it.

PROTECTING THE PUBLIC 2020-2021 SNAPSHOT

Total Disciplinary Sanctions 372

***Total Complaints Resolved 459**

Disbarments 18

Public Reprimands 36

Resignations in Lieu of Discipline 15

Private Reprimands 100

Suspensions 123

Grievance Referral Program 80

- \$308,002 in attorneys' fees were collected from respondent attorneys as part of a sanction
- \$483,699.91 in funds were approved for victims of attorney misconduct by the State Bar of Texas Client Security Fund, with 135 applications reviewed by the subcommittee
- Approximately 5,000 phone calls were returned by the State Bar of Texas Ethics Helpline
- The State Bar Client-Attorney Assistance Program resolved 911 matters
- 2,693 lawyer advertisements received by the State Bar Advertising Review Committee

* Each sanction entered may have involved complaints filed by more than one complainant.

GENDER AND RACE 2020-2021 SNAPSHOT

Total Disciplinary Sanctions 372

GENDER:

Male Respondents 79%

Female Respondents 21%

RACE:

White/Caucasian 59%

Black/African American 11%

Asian 2%

Hispanic/Latino 13%

Other/Not Specified 15%

The information regarding race and gender is based on information voluntarily provided by bar membership in the attorney profiles maintained by the State Bar of Texas and is therefore not a complete picture of gender and racial statistical information.

Recognizing Volunteers

*Currently, 373 Texans serve on local
grievance committees.*

Two-thirds are lawyers.

One-third are public members.

*Collectively, they volunteer thousands of hours
each year to protect the public.*

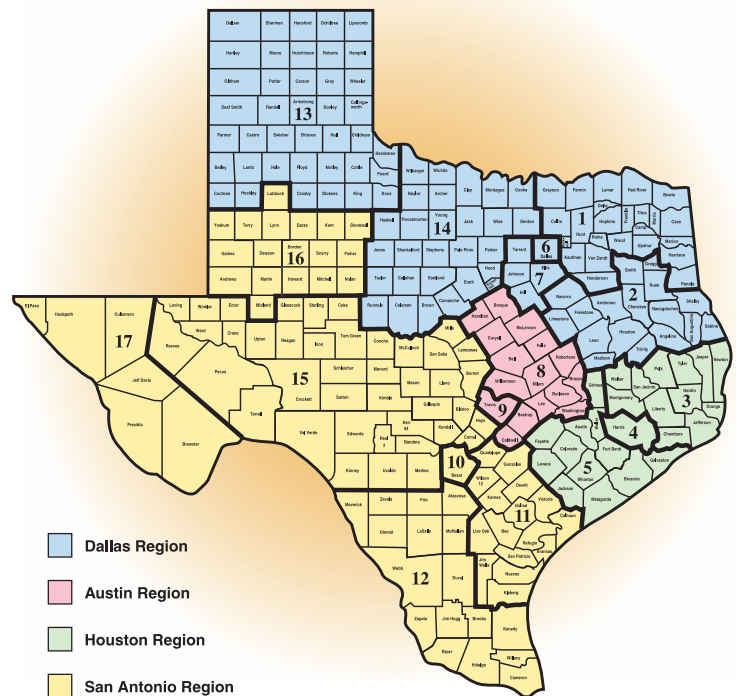
OFFICE OF CHIEF DISCIPLINARY COUNSEL

The Texas attorney discipline system is administered by the Office of Chief Disciplinary Counsel, whose work is overseen by the Commission for Lawyer Discipline. CDC represents the Commission in disciplinary litigation. Professionalism is directly tied to the public's perception of the ability of the State Bar of Texas to discipline its own lawyers and protect the public from unethical practitioners. In recognition of this close connection, emphasis is placed on the quality of disciplinary prosecutions, identification of disability or impairment problems, solutions for attorneys in need of law practice management or other basic skills, and innovative ways to maintain open communication between the public and the bar.

STAFFING AND TRAINING

The Office of Chief Disciplinary Counsel operates the discipline system with 96 full-time employees, including 37 lawyers, 12 investigators, 33 legal support staff members, 10 administrative support staff members, and four administrative managers.

In addition to its headquarters in Austin, CDC has regional offices in San Antonio, Dallas, and Houston. Each regional office is responsible for the investigation and prosecution of disciplinary matters within its region and is managed by a regional counsel. CDC provides two comprehensive in-house orientation programs for all newly hired employees statewide — one for lawyers and one for non-lawyer staff. The orientation is held on the employee's first day of work and provides an overview of the core functions of the organization as a whole, as well as a detailed review of the work of CDC.



ATTORNEY ETHICS HELPLINE

CDC maintains, as a service to the members of the bar, a toll-free Attorney Ethics Helpline, operated from 8 a.m. to 5 p.m. Monday through Friday.

The helpline is designed to assist Texas attorneys who have questions about their ethical obligations to clients, courts, and the public under the Texas Disciplinary Rules of Professional Conduct. The service is designed to give attorneys access to rules, ethics opinions, and caselaw so that an attorney can make an informed decision about an ethics issue.



First in-person meeting of the Commission for Lawyer Discipline in 16 months.

The information provided is informal and not binding on any District Grievance Committee or court. Pursuant to the policy of the State Bar Board of Directors, the chief disciplinary counsel and her staff are not permitted to issue written opinions nor may they provide legal advice.

The Attorney Ethics Helpline does not provide legal assistance to the general public and cannot address questions concerning pending grievances.

During the 2020-2021 bar year, ethics attorneys Ellen Pitluk and Rita Alister returned approximately 5,000 calls to the Ethics Helpline. These calls ranged from simple inquiries to complex ethical questions that involved hours of research and discussion. The most commonly asked questions relate to conflicts of interest, confidentiality, safekeeping property, termination of representation, candor to the tribunal and fairness in adjudicatory proceedings, communicating with represented persons, fee-splitting or engaging in business with non-lawyers, advertising and solicitation, and the duty to report misconduct.

The ethics helpline attorneys strive to provide superior customer service.

THE ATTORNEY ETHICS HELPLINE NUMBER IS 800-532-3947.

STATEWIDE COMPLIANCE MONITOR AND GRIEVANCE REFERRAL PROGRAM

Disciplinary judgments often require that respondents refund all or part of the attorneys' fees paid to them by clients harmed by misconduct and pay the Commission for the attorneys' fees and costs incurred in prosecuting the disciplinary action. Terms of license suspension may also contain requirements directed toward changing lawyer behavior, for example, completing additional continuing legal education in the area of law practice management, assigning of a law practice monitor, auditing of the lawyer's trust account, or participating in treatment programs for mental health or substance use disorders. This results in frequent referrals to other bar programs such as TexasBarCLE and the Texas Lawyers' Assistance Program.

The statewide compliance monitor, Heather White, is housed in the Austin office, which enables her to manage the compliance caseload in a centralized and more consistent manner. She is assisted by the Grievance Referral Program administrator, Jennifer Ibarra, in cases involving rehabilitative terms of suspension. At the close of the 2020-2021 bar year, White had 473 active cases and had resolved 194 cases. As a matter of office policy, immediate payment of restitution is required in most cases involving agreed disciplinary judgments. An additional \$165,764 in restitution was collected in the 2020-2021 bar year in cases involving agreed judgments, non-agreed judgments, respondent defaults, and cases in which respondents were seeking reinstatement. The centralized compliance process contributed to \$308,002 in attorneys' fees collections for 2020-2021.

**MEDIA INQUIRIES REGARDING
THE DISCIPLINARY SYSTEM
SHOULD BE DIRECTED TO:**

**Claire Reynolds
Public Affairs Counsel
Office of Chief Disciplinary Counsel
512-427-1354
creynolds@texasbar.com**

CLIENT SECURITY FUND

As noted previously, as part of the State Bar's public protection mission, the Client Security Fund is available to eligible clients from whom their attorney stole money or failed to return an unearned fee.

Unless the lawyer is already disbarred, resigned in lieu of discipline, or deceased, eligible applicants must file a grievance that results in findings that the lawyer stole the client's money or failed to refund an unearned fee. Applicants must present proof of their losses and meet the statute of limitations for the fund, which is 18 months following the date of the disciplinary judgment. Applications to the fund are reviewed and acted upon by the Client Security Fund Subcommittee, a standing subcommittee of the State Bar Board of Directors. CDC, through Claire Reynolds, serves as the administrator and legal counsel to the fund. Reynolds is responsible for conducting investigations on applications and presenting recommendations to the subcommittee. In the 2020-2021 bar year, Reynolds presented 135 applications to the subcommittee. Of the 135 considered, 79 were approved, resulting in grants totaling \$483,699.91. This was a significant decrease from last year's grants of \$871,782.89, mostly as a result of disposing of lower-dollar claims and some applications being closed out due to the deceased attorneys' estate making payments to former clients. Specifically, 21 applications related to criminal law; eight to estate, wills, and probate law; 20 to family law; 11 to immigration law; seven to personal injury; and 12 classified as "other." Of the total approved for grants, \$143,475.00 was the result of attorney theft of settlement funds and \$340,224.91 was the result of attorneys failing to refund unearned fees. The category of "failing to refund unearned fees" includes deceased attorneys.

Time Period	Applications Presented	Applications Approved	Total Grants Approved
2020-2021	135	79	\$483,699.91
2019-2020	230	149	\$871,782.89
2018-2019	178	115	\$664,143.78
2017-2018	222	148	\$901,718.68
2016-2017	157	113	\$976,114.94
2015-2016	171	115	\$814,616.72
2014-2015	138	102	\$639,581.09
2013-2014	134	118	\$1,232,355.00

"I went into GRP with a positive attitude but did not expect to learn a great deal from the assignments. I was wrong. The case plan was right on point for some of the areas I needed to work on to improve as an attorney. The assignments also helped me improve as a human being. The program forced me to look inward and reexamine some of the parts of my life that were not working. I am more at peace with myself now than in a long time." — GRP Participant

“The results of this experience has led to new policies and procedures being implemented at the firm. In addition, the GRP program has given me a significant number of tools that I can use in the future to better serve my clients.” — GRP Participant

BARRATRY

In 2020-2021, 16 barratry-related grievances were filed. Two of those grievances resulted in private reprimands. As of the end of the fiscal year, eight of those grievances remained under investigation.

CDC continues to partner with State Bar leadership, local bar associations, prosecutors, and members of law enforcement to combat and educate the public and the profession about the problem of barratry and improper solicitation. CDC continues to pursue a targeted public information campaign designed to educate victims and their families about the dangers of barratrous behavior by unscrupulous attorneys, health care professionals, funeral homes, towing companies, roofers, insurance adjusters, and others with whom they may come into contact in the aftermath of an accident or mass disaster. At intake, CDC identifies and tracks all complaints that allege barratry-related behavior or where the complainant has indicated on the grievance form that the attorney that is the subject of the complaint improperly solicited his or her case. These and other outreach and enforcement efforts will continue to be a focus of CDC.

CDC also continues to work with local law enforcement, district attorneys, the Attorney General’s Consumer Protection Division, Texas Rangers, the FBI, the U.S. Department of Justice, the IRS, the U.S. Citizenship and Immigration Services, and the National Insurance Crime Bureau on barratry-related investigations, as disciplinary and other investigations of barratry often overlap. Two consistent difficulties faced by CDC in investigating barratry-related grievances are the need to rely on co-conspirator testimony and the fact that moneys paid for the soliciting of clients are often made in cash and cannot be tracked. However, CDC coordination and cooperation with criminal barratry prosecutions has proven fruitful in those rare instances where the crime has been prosecuted. Likewise, the grievance process remains available to members of the profession who are pursuing civil remedies for improper solicitation under Chapter 82 of the Government Code.

“In closing, I must say that all this activity was very informational and helpful. So I am glad that I got to see the seminar and read the materials. I also kept copies to refer to them in my practice from now on.” — GRP Participant

DISTRICT GRIEVANCE COMMITTEES

Texas is proud of its tradition of utilizing local volunteers to serve on grievance committees. The commitment of the district grievance committee members is vital to the success and effectiveness of the attorney discipline system. Currently, 357 volunteer grievance committee members serve on 17 committees throughout the state. Members are nominated by State Bar directors and appointed by the State Bar president.

The district grievance committees are composed of two-thirds lawyer members and one-third public members, each of whom serve a three-year staggered term and are eligible to serve two consecutive terms. Public members may not have, other than as consumers, a financial interest, direct or indirect, in the practice of law. Lawyer members must be licensed and in good standing in the state of Texas.

ROLE OF GRIEVANCE COMMITTEES

The district grievance committees perform two critical roles in the discipline system: (1) review complaints presented by CDC and determine whether the case should be dismissed or proceed to prosecution; and (2) sit as an administrative tribunal to determine whether professional misconduct was committed and assess an appropriate sanction.

TRAINING

Each year, CDC staff conducts comprehensive training for all district grievance committees throughout the state. This MCLE-approved training is conducted by regional counsel and their staff. Emphasis is placed upon the procedural and substantive rules governing the attorney discipline system, duties and authority of the grievance committees, and the importance of attendance and participation at scheduled hearings. In addition to these efforts, CDC has developed and produced several online training sessions addressing evidentiary hearings, common rule violations, issues related to the imposition of sanctions, attorneys' fees, and a grievance symposium that addressed a variety of



CDC's Ellen Pitluk working from home on a beautiful day.

issues related to the discipline process. The sessions were designed to provide grievance committee members with a more in-depth analysis of key issues in disciplinary cases in order to facilitate their work on the grievance committees. Additionally, the State Bar offers free continuing legal education courses specific to the Texas attorney grievance process for members of the grievance committees.

DIVERSITY OF GRIEVANCE COMMITTEE MEMBERS

Acknowledging the importance to the public and the lawyers of Texas for the members of the district grievance committees to fairly represent the racial, ethnic, and gender makeup of the districts they serve, the State Bar directors work with CDC to make appointments that maintain this diversity in membership, including the goal that lawyer members reflect various practice areas and law firm size. The most common areas of practice by committee membership are general practice, criminal law, family law, personal injury law, and probate law, which are also the most common types of law related to filed grievances.

2020-2021 DIVERSITY SURVEY OF GRIEVANCE COMMITTEE MEMBERSHIP COMPARED WITH STATE BAR MEMBERSHIP

Gender	Committee	Attorney Committee Membership	SBOT Membership
Male	67%	40%	63%
Female	33%	27%	37%

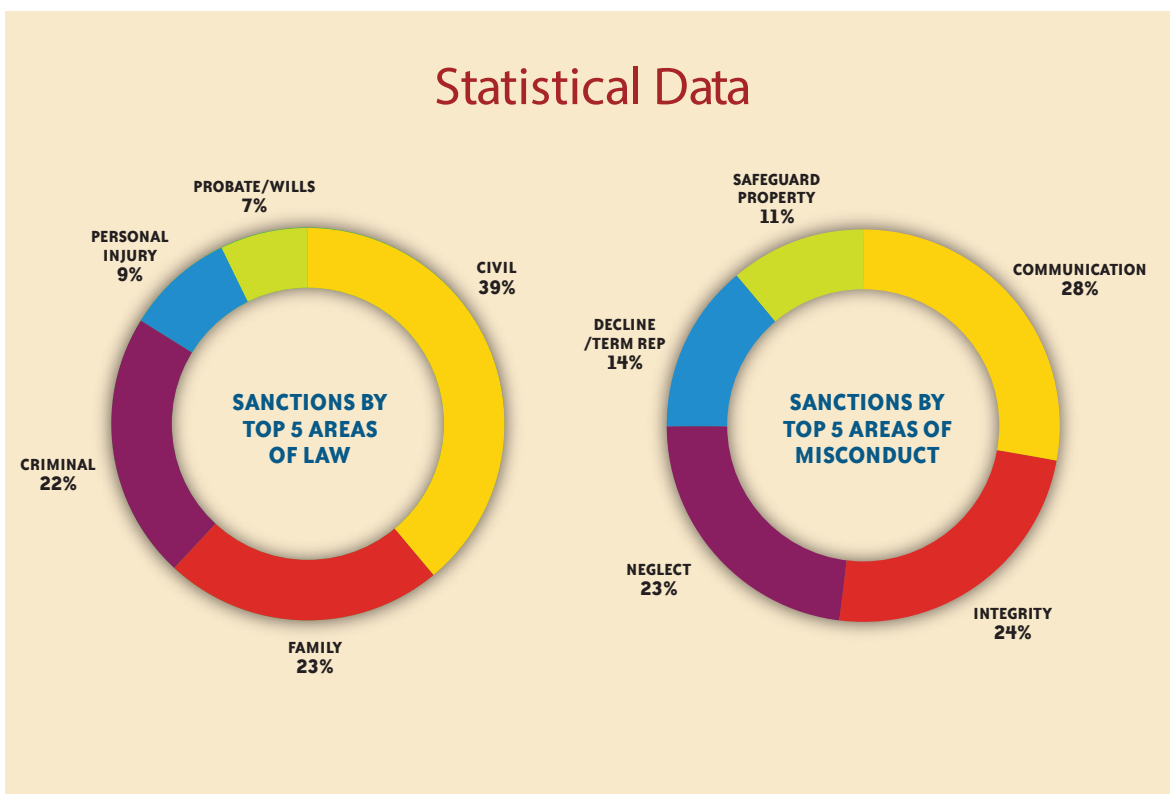
Ethnicity	Committee	Attorney Committee Membership	SBOT Membership
White	66%	70%	78%
Asian/Pacific Islander	2%	3%	4%
Black/African-American	6%	5%	6%
American Indian/Alaska Native	1%	1%	<1%
Hispanic/Latino	11%	14%	10%
Other	14%	7%	1%

OVERVIEW OF THE ATTORNEY DISCIPLINE PROCESS

The State Bar of Texas is dedicated to improving and advancing the quality of legal services to the public, protecting the public through the discipline system, and fostering integrity and ethical conduct in the legal profession.

The Texas attorney discipline system is governed by the Texas Disciplinary Rules of Professional Conduct (ethics rules) and the Texas Rules of Disciplinary Procedure (procedural rules). The ethics rules define proper conduct for purposes of professional discipline. The procedural rules provide the mechanism by which grievances are processed, investigated, and prosecuted.

The Texas Rules of Disciplinary Procedure and Texas Disciplinary Rules of Professional Conduct are available at texasbar.com/ethics.



GRIEVANCE PROCEDURE

Those who believe they have been a witness to attorney misconduct — clients, members of the public, members of the legal community, and judges — have the right to file a grievance against a Texas attorney. The grievance form is available on the State Bar website (in Spanish and English), in each of CDC's regional offices, through the State Bar Client-Attorney Assistance Program, and at courthouses, law libraries, legal aid organizations, and local bar associations across the state. Additionally, complainants can now file grievances directly online via the State Bar website. A video with detailed instructions on how to file a grievance can be found on the bar website under "For the Public — Watch How to File a Grievance."

CLASSIFICATION

The filing of a written grievance with any one of CDC's regional offices initiates the disciplinary process. Lawyers are subject to discipline only if they have violated the ethics rules (Texas Disciplinary Rules of Professional Conduct). Upon receipt of the grievance, CDC determines whether the grievance, on its face, alleges professional misconduct. This determination is referred to as classification of the grievance and is made within 30 days of the filing of the grievance. During the 2020-2021 bar year, 7,007 grievances were filed.

If the grievance does not allege professional misconduct, it is classified as an inquiry and dismissed or, upon the discretion of CDC, referred to the Client-Attorney Assistance Program, where CAAP will attempt to resolve minor issues. Within 60 days, CAAP will notify CDC of the outcome of the referral. CDC must, within 15 days of notification from CAAP, determine whether the grievance should be dismissed as an inquiry or proceed as a complaint.

If the grievance alleges professional misconduct, it is classified as a complaint and sent to the respondent lawyer for a response.

WHY ARE GRIEVANCES DISMISSED?

Of the grievances considered between June 1, 2020, and May 31, 2021, 4,870 were dismissed as inquiries. Grievances are dismissed for various reasons, including the following:

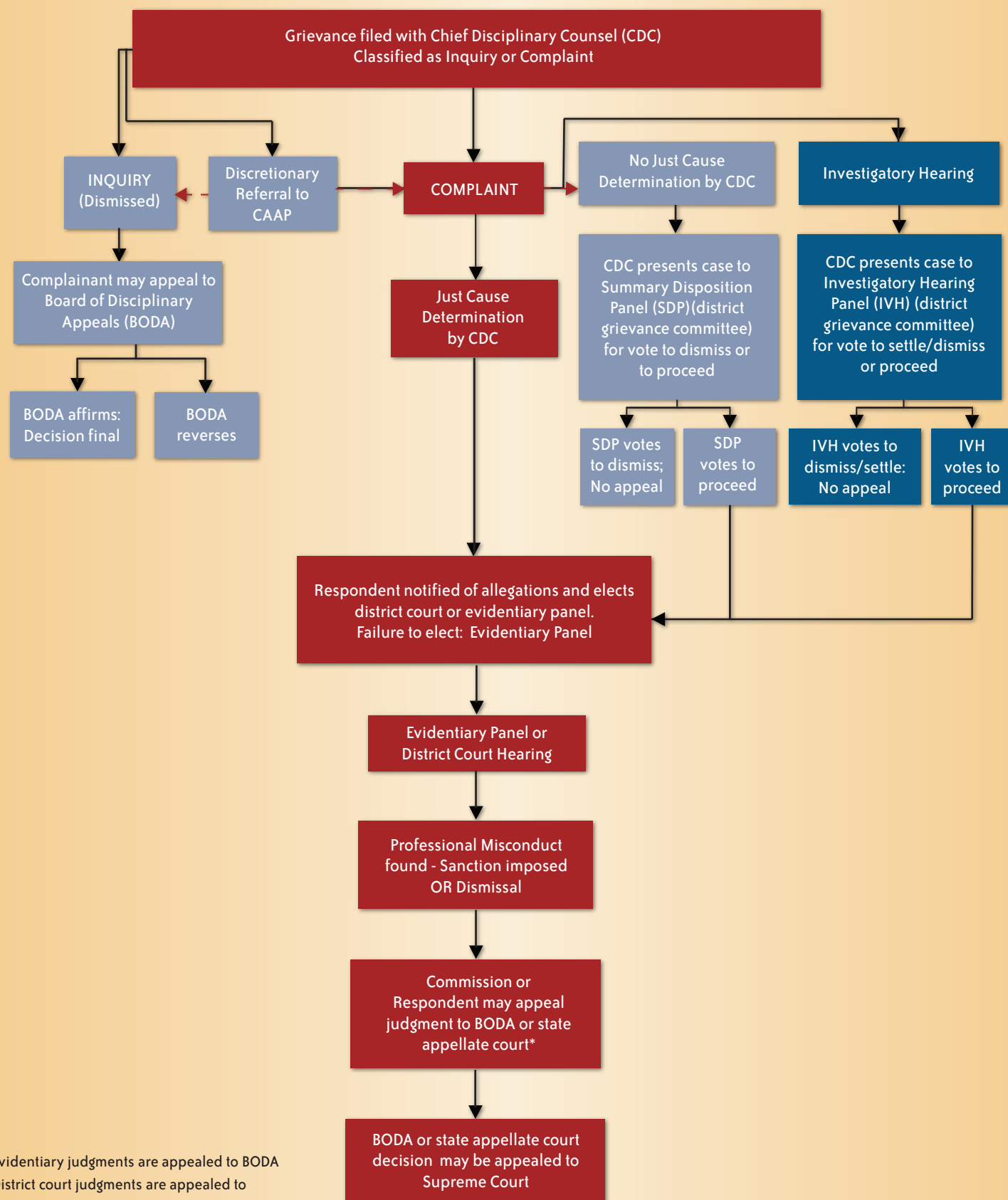
- The grievance concerns the outcome of a case but does not specify a violation of an ethics rule.
- The grievance does not involve a lawyer's conduct in his or her professional capacity.
- The grievance is filed too late.
- The grievance is duplicative or identical to a previous filing.
- The grievance concerns a lawyer who has been disbarred, has resigned, or is deceased.
- The grievance concerns a person who is not licensed as an attorney (handled by the Unauthorized Practice of Law Committee).
- The grievance is filed against a sitting judge (handled by the State Commission on Judicial Conduct).

CHECK IN THE SYSTEM — AN APPEALS PROCESS

The person who filed the grievance has the right to appeal CDC's classification decision to dismiss the grievance as an inquiry to the Board of Disciplinary Appeals. BODA is an independent 12-attorney tribunal, appointed by the Texas Supreme Court.

During the 2020-2021 bar year, there were 1,078 appeals by complainants from classification decisions. Of the 1,078 appeals, BODA reversed 89 classification decisions, resulting in an overall reversal rate of 8.3%. When BODA reverses a classification decision, the grievance is sent back to CDC and is processed as a complaint.

— PROCESSING A GRIEVANCE —



*Evidentiary judgments are appealed to BODA
District court judgments are appealed to state appellate court

COMPLAINT STATISTICS

During the 2020-2021 bar year, 1,946 of the grievances filed were classified as complaints. A majority of these complaints involved the areas of criminal law, family law, and personal injury. Among the most common allegations were neglect, failure to communicate, and complaints about the termination or withdrawal of representation.

INVESTIGATION AND DETERMINATION OF JUST CAUSE

Once the grievance is classified as a complaint, it is sent to the respondent lawyer, who has 30 days from receipt to respond. Within 60 days of the response deadline, CDC, through its investigation, must determine whether there is just cause to believe that professional misconduct occurred. If CDC decides to proceed with an investigatory subpoena or hearing, that deadline is extended to 60 days after completion of the hearing or the date of compliance in the subpoena.

Investigatory hearings are designed to be nonadversarial in nature and to assist in resolving grievances earlier in the process. Investigations may include the following:

- Requests for additional information from the complainant
- Information from corroborative witnesses
- Receipts
- Hourly records or billing statements
- Correspondence to and from client
- Records of calls, texts, and emails
- Court records, such as pleadings, motions, orders, and docket sheets
- Copies of settlement checks and/or disbursement statements
- IOLTA or trust account records, such as monthly bank statements, deposit slips, deposit items, and disbursement items
- State Bar Membership Department records, including records of current or past administrative suspensions
- Client file
- Witness interviews and sworn statements

"I will say that the review of these materials has been helpful, insightful, and I appreciate you making these materials known to me."
— GRP Participant

Investigatory hearings may result in a negotiated sanction, a dismissal of the complaint, or a finding of just cause.

NO JUST CAUSE FINDING

- If CDC determines that there is no just cause to proceed on the complaint, the case is presented to a Summary Disposition Panel, which is a panel of local grievance committee members composed of two-thirds lawyers and one-third public members. The Summary Disposition Panel is an independent decision maker and has the discretion to either accept or reject CDC's determination.
- Information and results regarding CDC's investigation are presented to the panel at a docket hearing without the presence of either the complainant or respondent. If the panel accepts CDC's determination, the complaint will be dismissed. If the panel rejects CDC's determination, the panel votes to proceed on the complaint.
- During the 2020-2021 bar year, 1,403 cases were presented to Summary Disposition Panels of local grievance committees for consideration. The panels voted to dismiss in 1,394 of those cases.

TRIAL OF THE COMPLAINT

If CDC finds just cause or the Summary Disposition Panel votes to proceed on the complaint, the respondent lawyer is given written notice of the allegations and rule violations. The respondent has 20 days to notify CDC whether he or she chooses to have the case heard before an evidentiary panel of the grievance committee or by a district court, with or without a jury. This choice is referred to as the respondent's election. A respondent who fails to elect will have the case tried before an evidentiary panel of the grievance committee.

2020-2021 BAR YEAR		2019-2020 BAR YEAR	
Elected Evidentiary	61	Elected Evidentiary	78
Defaulted into Evidentiary	137	Defaulted into Evidentiary	130
Elected District Court	27	Elected District Court	30

Evidentiary panel hearings are confidential and allow for a private reprimand, the least sanction available, to be imposed. District court proceedings are public and the least sanction available is a public reprimand. In both types of proceedings, the parties are the Commission for Lawyer Discipline represented by CDC and the respondent lawyer. It is the Commission's burden to prove the allegations of professional misconduct by a preponderance of the evidence.

If no professional misconduct is found, the case is dismissed. If professional misconduct is found, a separate hearing may be held to determine the appropriate discipline. In evidentiary panel proceedings, the panel may also find that the respondent suffers from a disability and forwards its finding to the Board of Disciplinary Appeals.

During the 2020-2021 bar year, CDC resolved 459 complaints before grievance committee panels, district courts, and the Board of Disciplinary Appeals and disposed of almost 1,400 cases before Summary Disposition Panels of the local grievance committees.

GRIEVANCE REFERRAL PROGRAM

Implemented in 2007, the Grievance Referral Program is an important component of the attorney discipline system. It was designed to help identify and assist lawyers who have impairment or performance issues and who enter the disciplinary system as a result of minor misconduct. GRP allows the Commission for Lawyer Discipline to refer to the program lawyers who have engaged in minor misconduct and who otherwise meet the GRP eligibility criteria. In exchange for a dismissal of the underlying complaint by the Commission, the respondent lawyer agrees to complete a 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.

GRP presents an opportunity for respondent lawyers to address the issues that contributed to the misconduct, including issues of law practice management, substance use, and mental health. In this way, the public is better protected from future misconduct by the lawyer.

During 2020-2021, the GRP administrator resolved 80 cases.

PUNISHMENT FOR PROFESSIONAL MISCONDUCT

The term “sanction” refers to the level of discipline imposed against a respondent attorney.

In an effort to ensure fairness and consistency in determining sanctions, the Texas Rules of Disciplinary Procedure contain guidelines for imposing sanctions as to different types of misconduct. In 2018, those guidelines were revised to more clearly state which sanctions should be issued for specific types of misconduct. Specifically, in imposing sanctions, the disciplinary tribunal should consider:

- the duty violated;
- the respondent attorney’s level of culpability;
- the potential or actual injury caused by the respondent attorney’s misconduct; and the existence of aggravating or mitigating factors.

PRIVATE REPRIMAND

A private reprimand is available only if the case is tried before an evidentiary panel of the grievance committee. This sanction is not available in a case heard before a district court. A private reprimand is the least level of discipline that can be given. It is not public and this information is not published in connection with the specific lawyer and is not released upon inquiries from the public. However, this sanction remains a part of the lawyer’s disciplinary history and may be considered in any subsequent disciplinary proceeding. The Texas Legislature and Commission for Lawyer Discipline have established limitations on the use of private reprimands. During the 2020- 2021 bar year, CDC obtained 100 private reprimands.

A private reprimand is generally appropriate in cases in which a respondent attorney causes little or no actual or potential injury and:

- does not act with reasonable diligence in representing a client, communicating with a client, providing competent representation, or abiding by client decisions;
- is negligent in dealing with client property;
- negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed;
- engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the respondent’s own interests, or whether the representation will adversely affect another client;
- engages in an isolated instance of negligence in determining the accuracy or completeness of information provided to a client;
- engages in an isolated instance of negligence in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity;
- engages in an isolated instance of negligence that involves an abuse of the legal process;
- engages in an isolated instance of negligence in improperly communicating with an individual in the legal system;
- negligently engages in any other conduct involving the failure to maintain personal integrity;
- engages in an isolated instance of negligence in not following applicable procedures or rules; or
- engages in an isolated instance of negligence that is a violation of a duty owed as a professional.

A private reprimand is **not** available if the respondent lawyer:

- has received a private reprimand within the preceding five-year period for a violation of the same disciplinary rule; or
- has engaged in misconduct involving theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
- is a prosecutor that has failed to disclose exculpatory evidence.

PUBLIC REPRIMAND

This type of discipline is public and is published together with the name of the respondent lawyer.

A public reprimand is generally appropriate in cases in which a respondent attorney causes injury or potential injury and:

- fails to act with reasonable diligence in representing a client, communicating with a client, providing competent representation, or abiding by client decisions;
- is negligent in dealing with client property;
- negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed;
- is negligent in determining whether the representation of a client may be materially affected by the respondent's own interests, or whether the representation will adversely affect another client;
- is negligent in determining the accuracy or completeness of information provided to a client;
- is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld;
- negligently engages in conduct involving an abuse of the legal process;
- is negligent in determining whether it is proper to engage in communication with an individual in the legal system; negligently engages in any other conduct involving the failure to maintain personal integrity;
- while acting in an official or governmental position, negligently fails to follow applicable procedures or rules;
- negligently engages in conduct that is a violation of a duty owed as a professional;
- negligently violates the terms of a prior disciplinary order; or
- has received a private reprimand for the same or similar misconduct and engages in further similar acts of misconduct.

During the 2020-2021 bar year, CDC obtained 36 public reprimands.

SUSPENSION FOR A TERM CERTAIN

Commonly referred to as an "active suspension," this public discipline means that the respondent lawyer is prohibited from practicing law for the length of the suspension. If the lawyer practices law during an active term of suspension, the conduct is a separate basis for further discipline and/or for contempt of the judgment. Upon the conclusion of an active suspension, the lawyer is eligible to practice law, provided that all other requirements for eligibility, such as payment of bar dues and compliance with continuing legal education, are current.

"I will be open and honest when I say this mess has been the hardest issue for me to deal with and address in over 30 years of practice. Your kindness has helped me deal with this situation."

— GRP Participant

FULLY PROBATED SUSPENSION

This type of discipline is public and is for a term certain; however, the suspension is “probated,” which means that the respondent lawyer may practice law during the period of suspension, but the lawyer must comply with specific “terms of probation” throughout the probated suspension period.

Terms of probation typically require that the respondent lawyer refrain from engaging in further misconduct; not violate any state or federal criminal statutes; keep the State Bar notified of current mailing, residential, and business addresses; comply with continuing legal education requirements; comply with the rules for maintaining trust accounts; and respond to any requests for information by CDC in connection with an investigation of allegations of misconduct.

Probation terms may also include, depending upon the facts of a particular case, that the respondent lawyer take additional continuing legal education, submit to a psychological evaluation, attend substance use counseling, practice law under the supervision of a designated monitor, or pay restitution and attorneys’ fees by a certain date.

PARTIALLY PROBATED SUSPENSION

This type of discipline is a combination of an active suspension followed by a period of probated suspension and is public.

A suspension is generally appropriate when a respondent attorney causes injury or potential injury and:

- knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions;
- engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions;
- knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client;
- knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed;
- knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict;
- knowingly deceives a client;
- knows that false statements or documents are being submitted to the court or another or that material information is improperly being withheld, and takes no remedial action;
- knows that he or she is abusing the legal process;
- engages in communication with an individual in the legal system when the respondent knows or should know that such communication is improper;
- knowingly engages in criminal conduct that seriously adversely reflects on the respondent’s fitness to practice law;
- knowingly engages in conduct involving the failure to maintain personal integrity;
- while acting in an official or governmental position, knowingly fails to follow applicable procedures or rules;
- knowingly engages in conduct that is a violation of a duty owed as a professional;
- has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct.

During the 2020-2021 bar year, CDC obtained 123 suspensions.

DISBARMENT

This is the most severe discipline resulting in a complete loss of a respondent lawyer's license to practice law. Once disbarred, the lawyer's name is removed from the membership rolls of the Supreme Court and the lawyer is required to remit his or her law license and bar card.

After five years, a disbarred lawyer may petition a district court to be reinstated to the practice of law. The disbarred lawyer must prove that reinstatement is in the best interest of the public and the profession, as well as the ends of justice. If such an application is granted, the disbarred lawyer is not automatically granted a law license. The disbarred lawyer must still pass the bar exam administered by the Texas Board of Law Examiners.

Disbarment is generally appropriate when a respondent attorney causes injury or potential injury and:

- abandons his or her law practice;
- knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions;
- engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions;
- knowingly converts client property;
- with the intent to benefit himself or another, knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed;
- without the informed consent of the client, engages in representation of a client knowing that the respondent's interests are adverse to the client's with the intent to benefit the lawyer or another;
- without the informed consent of the client, simultaneously represents clients that the respondent knows have adverse interests with the intent to benefit the lawyer or another;
- without the informed consent of the client, represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the respondent or another;
- knowingly deceives a client with the intent to benefit the respondent or another;
- with the intent to deceive the court or another, makes a false statement, submits a false document, or improperly withholds material information;
- knowingly engages in an abuse of the legal process with the intent to obtain a benefit for the respondent or another;
- intentionally tampers with a witness;
- makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding;
- improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding;
- engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft;

*"In closing, I must say that all
this activity was very
informational and helpful.*

*So I am glad
that I got to see the seminar
and read the materials.*

*I also kept copies to refer
to them in my
practice from now on."*

— GRP Participant

- or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses;
- knowingly engages in any other conduct involving the failure to maintain personal integrity;
 - while acting in an official or governmental position, knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another;
 - knowingly engages in a conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the respondent or another;
 - intentionally or knowingly violates the terms of a prior disciplinary order; or
 - has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct.

During the 2020-2021 bar year, CDC obtained 18 disbarments.

ANCILLARY SANCTIONS

Finally, the term “sanction” may include as an ancillary requirement: (1) restitution (which may include repayment to the Client Security Fund of the State Bar of any payments made by reason of the respondent lawyer’s misconduct); and (2) payment of reasonable attorneys’ fees and all direct expenses associated with the disciplinary proceedings.

“This has been an eye-opening experience as I have better understood the business/client management aspect of practicing law. We have to approach that part of our practice in the same detailed way that we approach cases in court or a big trial. Most importantly, I have gained a better appreciation of our profession and understand that it is a privilege that can be lost if an attorney does not instill accountability in all facets of their practice, 24/7. It is easy to deflect issues on difficult clients or responsibility to staff as your practice grows, but at the end of the day an attorney stands for accountability.” — GRP Participant

OTHER DISCIPLINARY PROCEEDINGS

COMPULSORY DISCIPLINE

If an attorney has been convicted of or pleaded nolo contendere to, or has been put on probation, with or without an adjudication of guilt, for a serious or intentional crime (as those terms are defined in the TRDP), CDC will seek compulsory discipline.

Crimes that subject a lawyer to compulsory discipline include barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or property; any crime involving misapplication of money or other property held as a fiduciary; and any attempted conspiracy or solicitation of another to commit any of these crimes.

These proceedings are filed with the Board of Disciplinary Appeals. The criminal judgment or order of deferred adjudication is conclusive evidence of the attorney's guilt of the commission of the crime. If the criminal conviction of a serious or intentional crime is on appeal, the lawyer's license shall be suspended during the pendency of the appeal. Where the sentence includes any period of incarceration other than as a condition of probation, the lawyer shall be disbarred. Where the criminal sentence is fully probated, BODA has the discretion to either suspend for the period of criminal probation or disbar the attorney. A party appeals from a compulsory discipline decision to the Texas Supreme Court.

During the 2020-2021 bar year, nine of the sanctions entered were a result of compulsory discipline cases.

INTERIM SUSPENSION

If CDC determines during the course of investigating a complaint that one or more grounds exist to support seeking an interim suspension of the respondent's law license, CDC can seek authority from the Commission to pursue an interim suspension.

If such authority is given, a petition is filed in a district court of proper venue, service is obtained on the respondent, and the court is to set a hearing within 10 days. The court may suspend the attorney pending final disposition of the disciplinary action if the court finds by a preponderance of the evidence that the respondent poses a substantial threat of irreparable harm to clients or prospective clients. Any of the following elements conclusively establishes such a substantial threat of irreparable harm:

- Conduct that includes all elements of a serious crime (as that term is defined in the disciplinary rules); or
- Three or more acts of professional misconduct as defined in the rules, whether or not there is harm; or
- Any other conduct that, if continued, will probably cause harm to clients or prospective clients.

"All in all I'd say this program served as a good wake up call, not only for showing me the tools I need to tidy up my practice, but also how I should treat my business."
— GRP Participant

RECIPROCAL DISCIPLINE

If an attorney is disciplined in another jurisdiction where the attorney is licensed to practice law, CDC may seek the identical or “reciprocal” discipline. These proceedings are filed with the Board of Disciplinary Appeals. CDC files a petition for reciprocal discipline, which includes a certified copy of the order of discipline from the other jurisdiction and requests that the lawyer be disciplined in Texas. BODA notifies the attorney, who has 30 days to show why imposition of the identical discipline in Texas would be unwarranted. Defenses available to the attorney include the following:

- The procedure in the other jurisdiction was so lacking in notice or opportunity to be heard that the attorney was deprived of due process.
- There was such an infirmity of proof in the other jurisdiction that the conclusion that was reached should not be accepted as final.
- Imposition of identical discipline would result in grave injustice.
- That the misconduct established in the other jurisdiction warrants a substantially different discipline in this state.
- That the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute professional misconduct in this state.

Absent establishment of a defense, BODA shall impose discipline identical, to the extent practicable, with that imposed by the other jurisdiction. A party appeals a reciprocal discipline decision to the Texas Supreme Court. During the 2020-2021 bar year, 17 of the sanctions entered were a result of reciprocal discipline cases.

DISABILITY SUSPENSION

A disability is any physical, mental, or emotional condition that results in an attorney’s inability to practice law or to carry out his or her professional responsibilities. No substantive rule violation is required to find that an attorney has a disability.

If CDC during a just cause investigation, or an evidentiary panel during the course of an evidentiary proceeding, believes that an attorney is suffering from a disability, the matter is forwarded to BODA for appointment of a district disability committee. The district disability committee determines whether the respondent is, in fact, suffering from a disability and, if so, indicates such to BODA, which then enters an order suspending the attorney for an indefinite period.

The disability process tolls the four-year statute of limitations for disciplinary matters.

REVOCATION

Violation of any term of the probated portion of a suspension may subject a respondent lawyer to a “revocation” of the probation resulting in an active suspension from the practice of law. When a judgment is entered by an evidentiary panel of the grievance committee, the revocation proceeding is filed before BODA. When a judgment is entered by a district court, the revocation proceeding is filed with the district court. If CDC proves a violation of probation by a preponderance of the evidence, the probation is revoked and the respondent attorney is suspended from the practice of law without credit for any probationary period served. An order revoking a probated suspension cannot be superseded or stayed pending an appeal. During 2020-2021, CDC sought and obtained three revocations of probation.

GRIEVANCE SUPPORT

CDC, in its administration of the Texas attorney discipline system, is greatly supported by a number of other State Bar programs, departments, and Supreme Court-appointed committees. The work of these groups impacts the number of grievances filed against lawyers and/or provides rehabilitative assistance to lawyers who are disciplined.

CLIENT-ATTORNEY ASSISTANCE PROGRAM

The Client-Attorney Assistance Program, or CAAP, is a voluntary confidential dispute resolution service of the State Bar of Texas. Its objective is to facilitate communication and the transfer of appropriate documents, as well as foster productive dialogue to help Texas lawyers and their clients resolve minor concerns, disputes, or misunderstandings impacting the attorney-client relationship. In 2020-2021, CAAP resolved 911 matters.

ADVERTISING REVIEW COMMITTEE

The Advertising Review Committee is responsible for reviewing lawyer advertisements and written solicitations as required by the Texas Disciplinary Rules of Professional Conduct. The ARC, through the State Bar's Advertising Review Department, manages the filing and review process for attorneys that market their services to the public to ensure that lawyers are complying with established ethical requirements.

In the 2020-2021 bar year, the department reviewed 2,693 submissions, with the largest category being electronic filings. Electronic media continues to be the focal point for Ad Review.

To further the department's educational outreach, the department provides a free one-hour ethics credit presentation focused on attorneys using social media to disseminate information about their legal services. The department is also responsible for distributing non-filer notices to attorneys who have not filed an advertisement.

LAW PRACTICE MANAGEMENT

The Law Practice Management Program was implemented by the State Bar of Texas to assist solo and small firm practitioners in the delivery of legal services by developing and promoting competent, professional, efficient, effective, economical, and innovative law office management practices. 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.

For the 2020-2021 bar year, the program assisted more than 26,000 lawyers through online classes, live and video seminars, webcasts, website resources, and telephone and email inquiries. The Law Practice Management Program webpages received almost 10,000 page views; the program launched a new website, texasbarpractice.com, which provides online resources to help attorneys start, maintain, and grow their law practices, including webcasts, articles, forms, and checklists available to aid attorneys in acquiring the skills they need to manage a law office effectively and avoid further practice management-related complaints. TexasBarCLE provided 16,216 lawyers with law practice management CLE programming at 157 events. The Law Practice Management Program responded to the challenges of the coronavirus pandemic by providing Texas attorneys with CLE programming, online videos, how-to guides, and other resources to assist attorneys in adapting and maintaining their practices during the COVID-19 crisis.

"At this time I would like to express my gratitude and thank you for this learning opportunity. This has truly been a very enlightening and rewarding experience."
— GRP Participant

MINIMUM CONTINUING LEGAL EDUCATION DEPARTMENT

The State Bar of Texas requires that every attorney complete 15 hours of continuing legal education each year to maintain an active law license, three of which are required to be in the area of ethics. This requirement is known as Minimum Continuing Legal Education.

The State Bar MCLE Department ensures that attorneys comply with the regulations and also approves courses for MCLE credit. Attorneys may access and update their MCLE records on the State Bar of Texas website. The department also offers an MCLE course search, which allows attorneys to search all approved CLE-accredited courses by date, topic, location, or sponsor.

Failure to comply with MCLE requirements can result in an administrative suspension from the practice of law. Practicing while on an administrative suspension is a violation of the Texas Disciplinary Rules of Professional Conduct.

TEXAS LAWYERS' ASSISTANCE PROGRAM

The State Bar of Texas established the Texas Lawyers' Assistance Program in 1989. TLAP's mission is to assist lawyers challenged by substance use and other mental health disorders that are interfering or may interfere with their ability to practice law in an ethical and professional manner. All assistance is confidential and may be accessed by calling or texting 800-343-8527 (TLAP).

In addition to educating law students, lawyers, and judges about the types of impairments studies show disproportionately impact the legal profession, TLAP offers a variety of intervention, assessment and referral, and rehabilitative services to impaired lawyers. Calls or texts to TLAP come either directly from the lawyer challenged by a substance use disorder or by another disorder such as depression or cognitive impairment, or from a "concerned other," usually a friend, colleague, judge, or family member.

STATE BAR OF TEXAS PUBLIC PROTECTION DOLLARS ACTUAL EXPENDITURES (UNAUDITED) 2020-2021

Commission for Lawyer Discipline	\$1,541	Texas Lawyers' Assistance Program	\$474,527
Office of Chief Disciplinary Counsel	\$9,297,115	Client-Attorney Assistance Program	\$556,548
UPL Committee	\$58,243		
Grievance Oversight Committee	\$15,862	Total General Fund	\$11,585,360
Professional Ethics Committee	\$3,766		
Board of Disciplinary Appeals	\$460,848	Client Security Fund - Claims Paid	\$539,448
Advertising Review	\$143,813		
Minimum Continuing Legal Education	\$573,097	Total State Bar Public Protection Dollars	\$12,124,808

GRIEVANCE OVERSIGHT COMMITTEE

The Grievance Oversight Committee is charged to study, review, and advise the Texas Supreme Court regarding the structure, function, and effectiveness of the discipline system. The GOC is composed of six attorneys and three public members appointed by the Texas Supreme Court. The committee is not part of the State Bar disciplinary process and neither considers nor resolves individual complaints involving attorney-client issues. The committee maintains a website, txgoc.com, and welcomes comments and suggestions from all interested parties. The most recent Biennial Report of the GOC can be found on its website.

During the 2020-2021 bar year, the Commission and CDC provided the GOC with the following information:

- Statistical data for the discipline system, including the number of grievances received, classification decisions, classification appeals, just cause determinations, summary disposition decisions, and elections to evidentiary or district court;
- Quarterly reports provided to the State Bar Board of Directors regarding the disposition of disciplinary proceedings by bar district and statistics of sanctions imposed;
- Written consumer complaints and responses;
- Responses to disciplinary system questionnaires received by CDC; and
- Portions of minutes from the Commission's meetings regarding non-case-specific topics.

"This program has given me some great insights that are helpful far beyond the representation of legal clients. This program has been a helpful tool for my life and would also have been especially helpful if I had remained in private practice as a solo practitioner." — GRP Participant

UNAUTHORIZED PRACTICE OF LAW COMMITTEE

The Unauthorized Practice of Law Committee is appointed by the Texas Supreme Court and is charged with preventing the unauthorized practice of law. The UPLC is composed of nine volunteer lawyers and laypersons appointed to three-year terms.

The practice of law by persons who are not authorized to do so frequently hurts the clients they may be trying to help, resulting in the loss of money, property, or liberty. The State of Texas limits the practice of law to persons who have demonstrated their knowledge of the law through education; who have passed a rigorous examination on the laws of Texas, including the rules of ethics; and who have passed a character review. The UPLC is prohibited from giving advisory opinions.

To ensure the public is protected from those who practice law illegally, the UPLC has divided the state into five regions: Northern, Central, Southern, Eastern, and Western. The UPLC has created 38 district subcommittees within the regions. Chairpersons are appointed to head the regional and district subcommittees. The busiest district subcommittees are Houston, Dallas, Austin, San Antonio, and Fort Worth. The UPLC maintains a website at txuplc.org, where individuals can fill out a complaint online and learn more about the workings of the committee.

PROFESSIONAL ETHICS COMMITTEE

The Professional Ethics Committee is a nine-member committee appointed by the Texas Supreme Court pursuant to Texas Government Code Section 81.091. The committee is charged with the responsibility of expressing opinions to questions regarding the propriety of professional conduct, which arise either upon a request for opinion by a State Bar member or upon the committee's own initiative. These opinions are published in the *Texas Bar Journal*. During the 2020-2021 bar year, the PEC issued two opinions on the following subjects, all of which can be found online at legalethicstexas.com:

OPINION 689 (SEPTEMBER 2020)

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer may direct a nonlawyer employee to staff a booth at a public venue and provide information to prospective clients or nonclients regarding professional employment to handle claims or lawsuits against insurance companies over property damage caused by severe weather events, provided neither the lawyer nor the nonlawyer initiates the contact by calling visitors to the booth or by talking about professional services with the visitor unless the visitor commences the conversation. The lawyer must also make reasonable efforts to ensure that the nonlawyer employee's conduct complies with the lawyer's professional obligations as required by the Rules. The lawyer may not pay the nonlawyer staff any bonus or additional compensation for enlisting one or more clients as a result of the nonlawyer's work at the booth. Finally, the nonlawyer employee should not provide legal advice to those seeking information at the booth.

OPINION 690 (OCTOBER 2020)

A lawyer who elects to take possession of tangible evidence from a client in a criminal matter may not conceal that evidence from a prosecuting attorney or obstruct access to that evidence if doing so would be "unlawful." A lawyer's conduct with regard to potentially relevant evidence is unlawful if it is prohibited by statute, court order, or mandatory disclosure obligation. In general, however, a Texas lawyer is not required to disclose ordinary tangible evidence in a criminal matter in the absence of a court order or agreement.

The common law may impose a self-executing obligation of disclosure if a lawyer takes possession of special criminal evidence, such as contraband, instrumentalities of a crime, or fruits of a crime. The precise scope of such an obligation is a question of substantive Texas law to be addressed by the courts. The failure to comply with a judicially recognized obligation of disclosure would be considered "unlawful" and would violate Rule 3.04(a).

Under the facts stated in this opinion, a lawyer who obtains ordinary tangible evidence from an incarcerated client does not violate the Texas Disciplinary Rules of Professional Conduct by refusing to produce the evidence to the prosecuting attorney until ordered to do so.

A lawyer is under no obligation to accept tangible evidence from a client charged with a crime. Assuming the lawyer does not believe the client will destroy the evidence if the lawyer refuses to accept it, and counsels the client regarding evidence preservation, the most prudent course may be to decline a client's request to accept custody of evidence related to an alleged crime.

STATE BAR OF TEXAS — A FEW STATS

106,591	All Active Members
93,821	In-State Attorneys
49	Median age of in-state attorneys
1:311	Ratio of all in-state attorneys to Texans
1:620	Ratio of in-state private practitioners to Texans
64	Percentage of in-state attorneys who are private practitioners
10	Percentage of in-state attorneys who are government lawyers
11	Percentage of in-state attorneys who are corporate/in-house counsel
86	Percentage of in-state attorneys in the four largest metropolitan areas (Houston-The Woodlands-Sugar Land MSA 32%, Dallas-Fort Worth-Arlington MSA 31%, Austin-Round Rock MSA 14%, San Antonio-New Braunfels MSA 8%)
8	Percentage of in-state attorneys who work as private practitioners in firms with 200 or more attorneys
38	Percentage of in-state attorneys who work as private practitioners in firms with five or fewer attorneys
\$122,666	Median income for full-time Texas attorneys
\$111,506	Median income for full-time solo practitioners

NOTE: Texas attorney data in this report is based on the State Bar of Texas membership records as of December 31, 2020, of each of the cited years. Texas general population data is based on July 2020 Census population estimates.

A TOOL FOR CONSUMERS

The State Bar of Texas website includes a

“Find-a-Lawyer”

*function that allows consumers to
access information about Texas lawyers.*

*More than 313,005 searches are
conducted each month,
by about 151,374 unique visitors.*

*Each attorney profile lists public disciplinary
actions in which there was a final
judgment. The site lists only the type of action
and its term (i.e., public reprimand,
suspension, etc.). Users are directed to
contact the Office of Chief Disciplinary
Counsel for more details
on the sanction.*



STATE BAR *of* TEXAS
Commission For Lawyer Discipline

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