

New Year, New Rules, and New Trends in Ethics and Legal Malpractice Cases

State Bar of Texas WAL CLE

January 21, 2021

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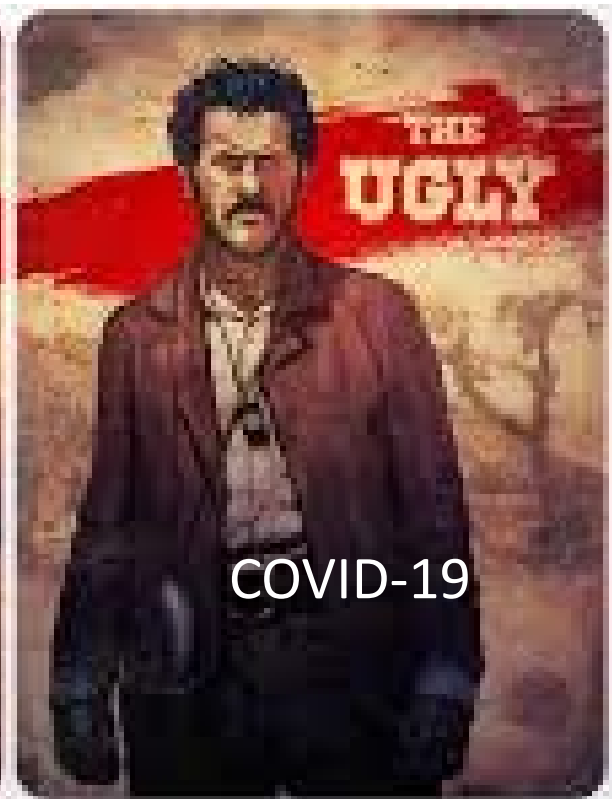
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Happy New Year

The Good, the Bad and the Ugly.



Positive Action

- Take Care of **You**rself
 - Exercise
 - Eat Well
 - Sleep
 - Meditate / Relax
 - Have Fun
 - Maintain Connections



Positive Action

- Take Care of **Clients**
- Best Practices vs. Best Defense
- Honesty
- Communication
 - Qualifications
 - Limitations
 - Mutual Expectations
- Support Staff Follows Your Lead



Disbarment

- Divorce
- Debt / No Financial Security
- Drugs / Alcohol
- Depression
- Death
- Dishonesty
- Deceit
- Discretion (lack of discretion in client and case selection).
- *Dumb* / Incompetence
- Disinterest / Neglect
- Dissatisfaction (Job)

Risk Factors



Positive Action

- Take Care of Your **Practice**
 - Simplify and Update
 - Forms
 - Technology – scanners, printers, apps
 - Paperless Office
 - Procedures
 - Expenses
 - Back Ups – Technology and Plans
 - Audit Accounts
 - Audit Files
 - Creative Alternatives



- What can I do better?
- What can I do to make my life easier?

Free Ethics Advice

RESOLUTIONS



BE
Awesome
TODAY

GRIEVANCE TRAIN





Fifty Shades of Grey



Texas **THE RULEMAKING PROCESS**



State Bar Act



TRDP

TDRPC



Administration



Texas Rules of Disciplinary Procedure

Texas Disciplinary Rules of Professional Conduct

- I. Client-Lawyer Relationship
- II. Counselor
- III. Advocate
- IV. Non-Client Relationships
- V. Law Firms and Associations
- VI. Public Service
- VII. Information about Legal Services
- VIII. Maintaining the Integrity of the Profession
- IX. Severability of Rules



PROPOSED RULES – 2021 VOTE

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

"How can I make this go away?"

GRIEVANCE TRAIN

Rule #1

You are not in control!



- Stop Talking!
- Required Response
- Limited Negotiations
- Statistics +/-

GRIEVANCE TRAIN

Rule #2

Do not panic!



The background of the slide is a blurred photograph of an office. In the foreground, there is a desk with an open book, a laptop, and a mug. The background shows a window and some office equipment. A dark blue rectangular box is overlaid on the left side of the image, containing the text.

GRIEVANCE TRAIN

Rule #3

Hire a lawyer.

ATTORNEY DISCIPLINARY SYSTEM STATISTICS

Attorney Discipline	19-20	18-19	17-18
Active Attorneys	105,125	103,342	102,044
Grievances Filed	7,505	8,015	7,640
Dismissed as Inquiries	5,123	5,561	5,096
Classified as Complaints	2,202	2,315	2,357
Total Complaints Resolved	497	589	490
Total Disciplines:	403	414	332
Disbarments	21	14	21
Resignations	9	17	23
Suspensions	142	152	116
Public Reprimands	39	32	25
Private Reprimands	106	124	70
Grievance Referral Program	86	75	77

ATTORNEY DISCIPLINARY SYSTEM STATISTICS 2019-20

Attorneys
105,125

Grievances Filed
7,505

Dismissed as Inquiries
5,123

Complaint
2,202

TOTAL DISCIPLINES 403

■ HAZMAT

- Do not ignore it.
- Treat the problem like a problem.

■ Resolve or Remediate

- Status letter.
- Billing/Accounting.
- Refund unearned fees.
- Turn over client file.
- Terminate representation.

■ Be Proactive (Inaction)

- Gather relevant documents.
- Identify potential witnesses.

■ Start the clock.

■ Insurance coverage.



Free Ethics Advice

GRIEVANCE

(formal or informal)

~~Problem~~
Solution

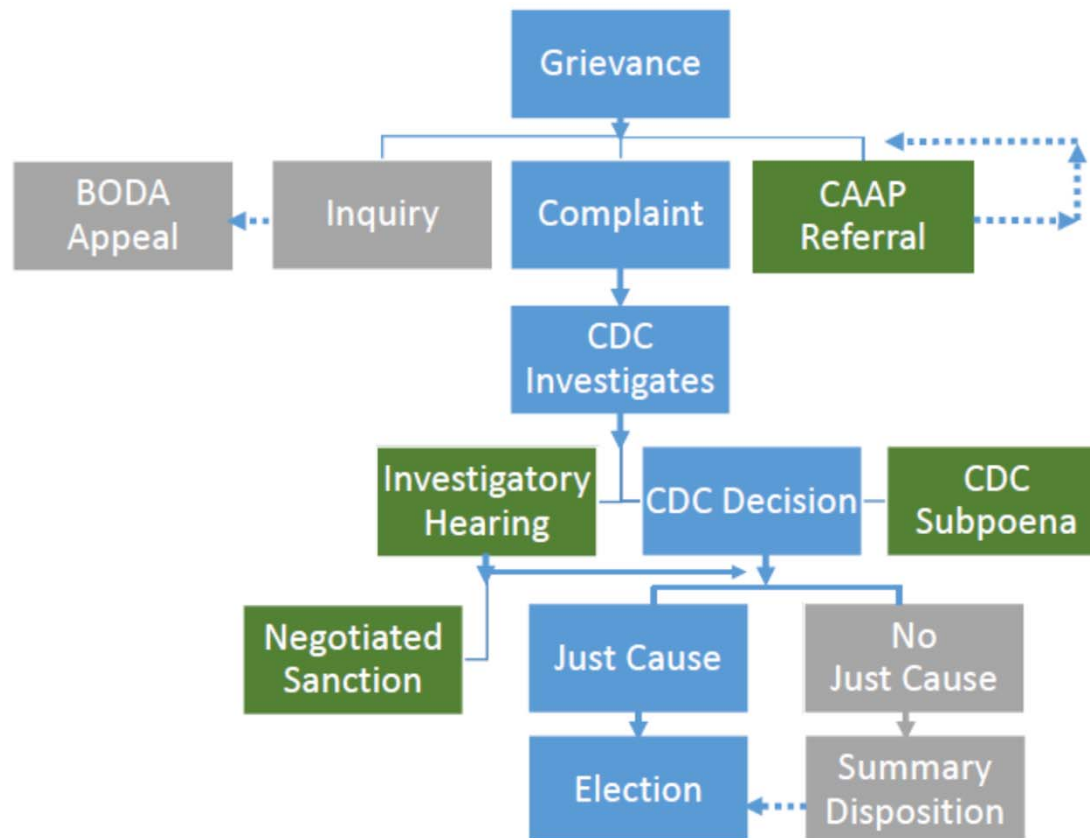
- Contract.
- Client file.
- Final accounting.
- Negotiate fees and refunds.
- Bill regularly - accurate.
- Assume you are being recorded.
- Read before you sign.
- Think before you act.
- Do not make things worse.
- “Cover up is worse than the crime.”
- The CDC is not your friend.

Free Ethics Advice

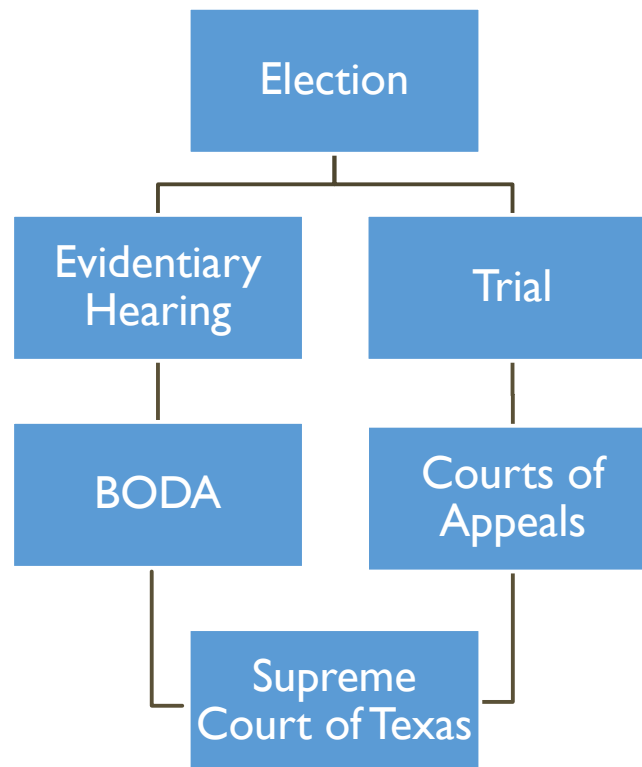
FOOLISHNESS



TEXAS ATTORNEY GRIEVANCE PROCESS – AS OF 06/01/18



TEXAS ATTORNEY GRIEVANCE PROCESS



RISK FACTORS



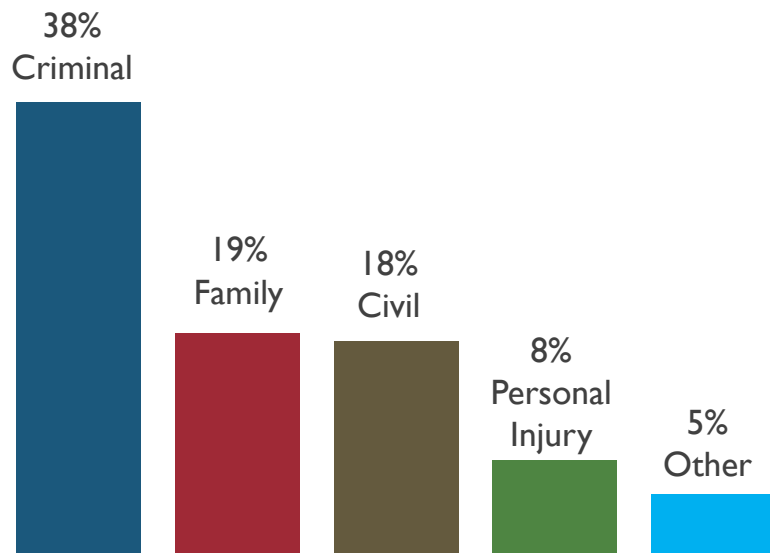
ATTORNEY DISCIPLINARY SYSTEM STATISTICS

AREAS OF LAW

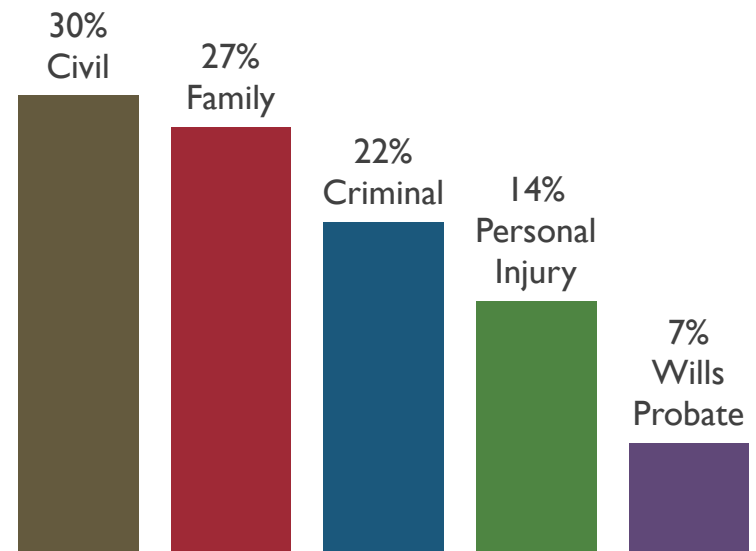
Areas of Law	19-20	18-19	17-18
Criminal	2,919	3,033	2,592
Family	1,430	1,491	1,482
Civil	1,376	1,423	1,398
Personal Injury	615	612	564
Other	394	348	330
Probate/Wills	306	354	345
Immigration	242	282	375
Bankruptcy	51	56	73

ATTORNEY DISCIPLINARY SYSTEM STATISTICS

Grievances by Top 5 Areas of Law



Sanctions by Top 5 Areas of Law



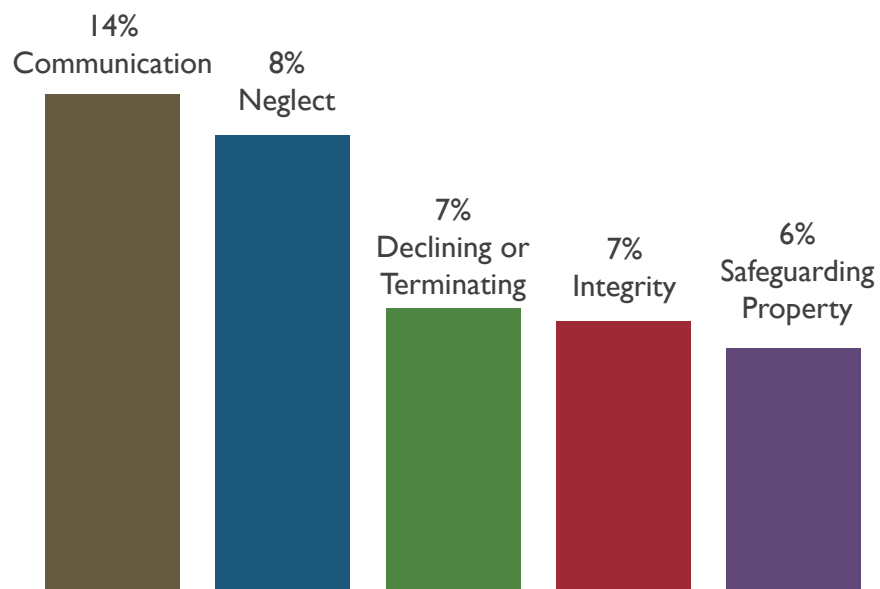
ATTORNEY DISCIPLINARY SYSTEM STATISTICS

RULE VIOLATIONS ALLEGED

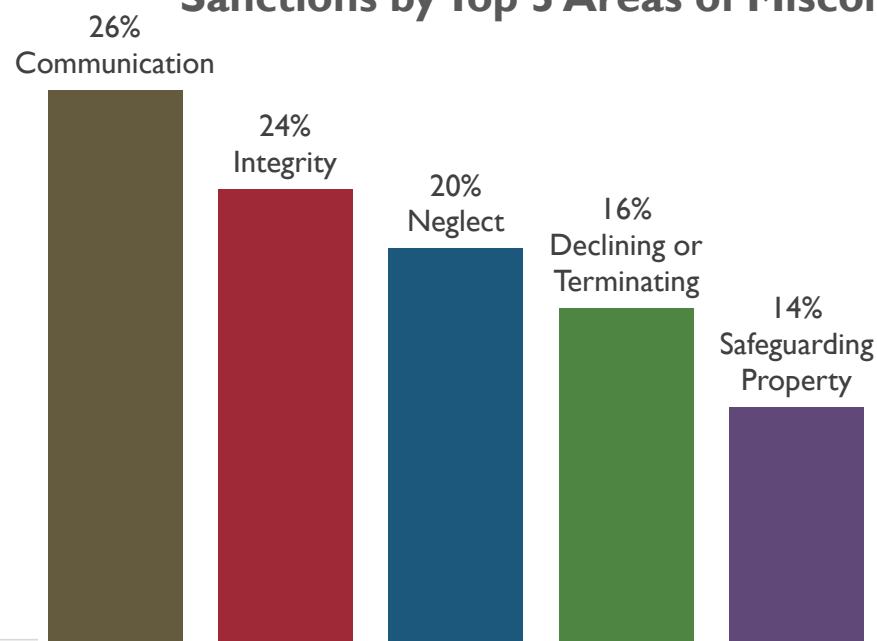
Rule Violations Alleged	19-20	18-19	17-18
Communication	1051	1193	1328
Neglect	965	1083	1083
Declining or Terminating Representation	600	618	703
Integrity	572	637	768
Safeguarding Property	516	574	544
Conflicts	154	172	210
Tribunals	187	158	257
Fees	115	101	145
Non-clients	81	109	141
Confidentiality	46	65	59
Law Firms	8	16	25
Advertising & Solicitation	13	28	10

ATTORNEY DISCIPLINARY SYSTEM STATISTICS

Grievances by Top Areas of Misconduct



Sanctions by Top 5 Areas of Misconduct

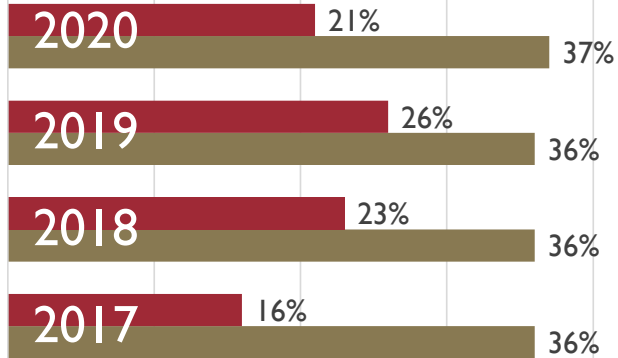


GENDER AND ETHNICITY

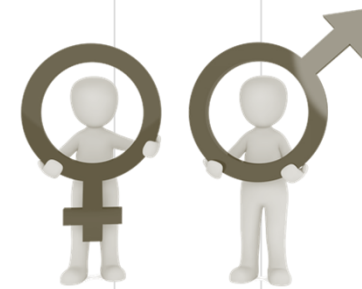
	2017-18		2018-19		2019-20	
All State Bar Attorneys	102,044		103,342		105,125	
Sex	101,629	Sanction	103,100	Sanction	104,947	Sanction
Male	64%	77%	64%	74%	63%	77%
Female	36%	23%	36%	26%	37%	23%
Race/Ethnicity						
White	80%	61%	79%	53%	78%	54%
Black/African-American	5%	12%	6%	14%	6%	13%
Hispanic/Latino	9%	15%	10%	19%	10%	21%
Asian/Pacific Islander	3%	2%	4%	2%	4%	2%
American Indian/Alaska Native	<1%		<1%		<1%	
Two or More Races	1%		1%		1%	
Other Race	1%	9%	1%	12%	1%	10%
Not Specified						
Total Sanctions		332		414		403

2016-20 SANCTIONS BY GENDER

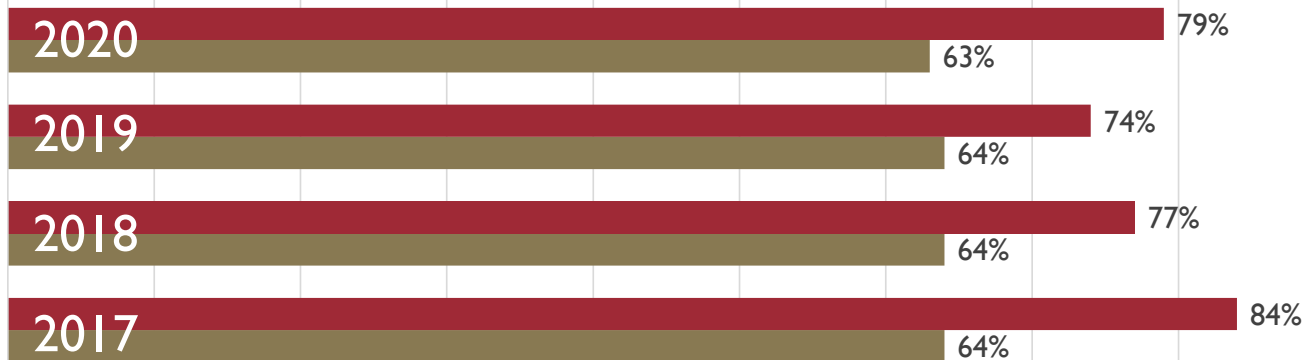
Women



■ Sanction
■ Total Attorneys



Men



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