

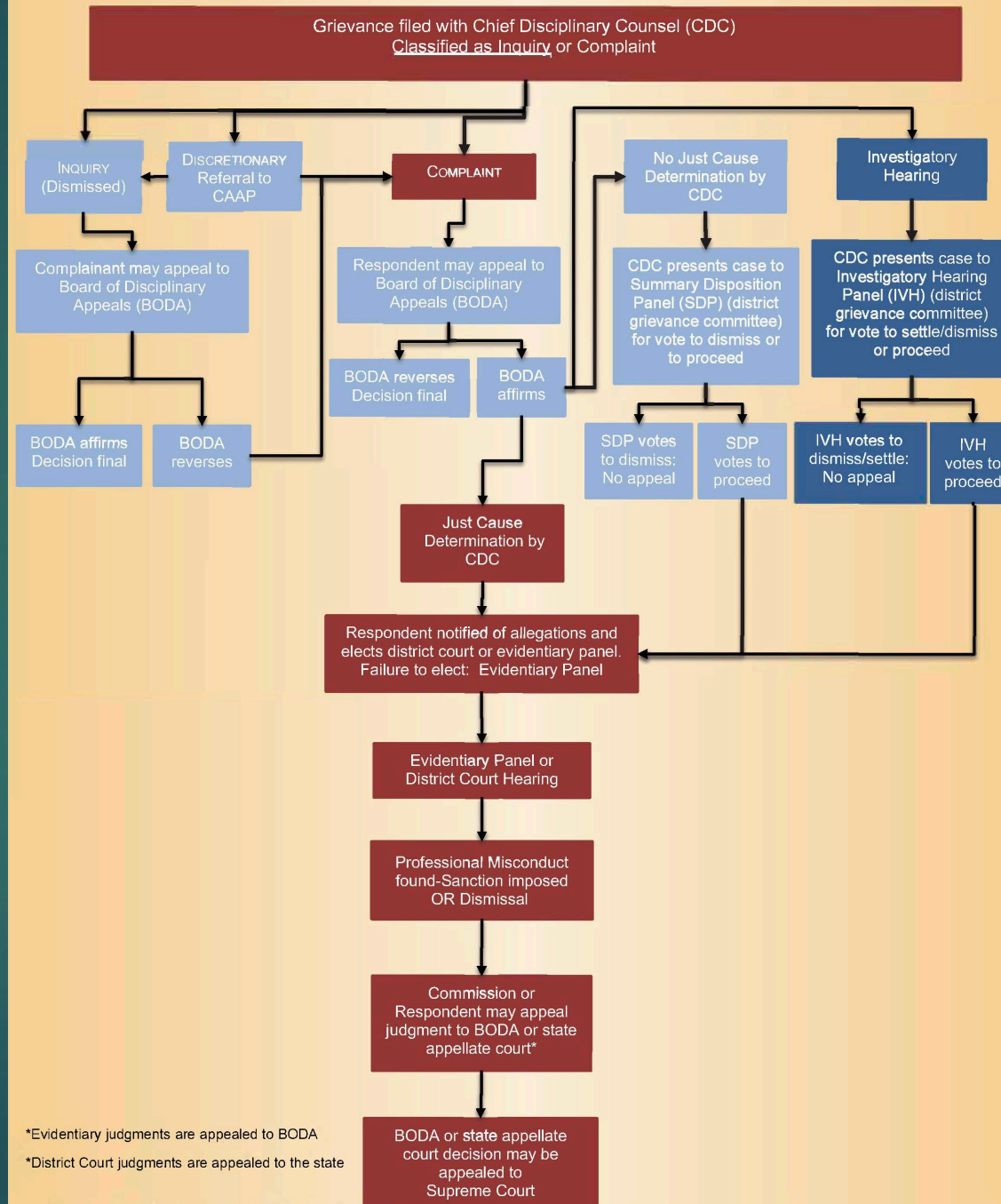


Grievance Got You?

WHAT TO DO BEFORE YOU PANIC AND FORGET EVERYTHING

Melody Poole for the State Bar of Texas Women and the Law Section on October 16, 2024

— PROCESSING A GRIEVANCE —



*Evidentiary judgments are appealed to BODA

*District Court judgments are appealed to the state

Grievance Process Step 1

File with the Chief Disciplinary Council

- **Who is the Chief Disciplinary Council “CDC”?**
- The attorney selected to perform disciplinary functions for the Bar. The CDC’s office operates with
 - 96 full-time employees, including
 - 33 lawyers
 - 4 regional counsel (Dallas, Houston, San Antonio, Austin)
 - 4 classification attorneys
 - 1 rules attorney
 - 2 ethics helpline attorneys
 - and 1 public affairs counsel
 - 13 investigators (plus 1 vacancy)
 - 4 office managers
 - 1 budget/human resources coordinator
 - 3 data analysts, and
 - 40 legal and administrative support staff (plus 1 vacancy)

Grievance Process Step 1

File with the Chief Disciplinary Council

➤ Who Can File the Grievance?

As of September 1, 2023:

- a family member of a ward in a guardianship proceeding that is the subject of the grievance;
- a family member of a decedent in a probate matter that is the subject of the grievance;
- a trustee of a trust or an executor of an estate if the matter that is the subject of the grievance relates to the trust or estate;
- the judge, prosecuting attorney, defense attorney, court staff member, or juror in the legal matter that is the subject of the grievance;
- a trustee in a bankruptcy that is the subject of the grievance; or
- any other person who has a ***cognizable individual interest in or connection to the legal matter or facts alleged*** in the grievance

Grievance – Side Note

TDRPC 8.03

➤ Reporting Professional Misconduct

- (a) "...A lawyer having knowledge that another lawyer has committed a violation of applicable rules of professional conduct that raises a substantial question as to that lawyers honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority."
- (c) provides that an approved peer assistance program (TLAP) would be the appropriate answer if the lawyer is impaired by chemical dependency or mental illness.
- Comment 1: when the lawyer has knowledge not protected.
- Comment 3: only requires disclosure of violations that avoid the reporting lawyer from violating the rules.
- Comment 4: only requires reporting those offenses a self—regulating profession must vigorously endeavor to prevent. Substantial refers to the seriousness of the possible offense and not the quantum of evidence.
- **Can you outline your cognizable individual interest in or connection to the legal matter or facts alleged in the grievance?**
- New Hampshire is only other state with a similar limitation: "With the exception of...a referral by a judge or attorney, it must be filed by a person who is directly affected by the conduct complained of or who was present when the conduct complained of occurred and contain a statement establishing these facts."

Grievance Process Step 1

File with the Chief Disciplinary Council

➤ How to File the Grievance?

- As of September 1, 2023, complainants **MUST USE** the current grievance form and all sections must be filled out, using “Not Applicable” when applicable. Old versions and incomplete forms will automatically be rejected and returned.
- A grievance can be submitted electronically in English or Spanish at <https://sbotsservices.texasbar.com/> or the PDF version may be faxed to (512) 427-4315 or mailed to P.O. Box 13287, Austin, Texas 78711
- Complaints should include copies of all supporting documents but are requested to keep additional information to 25 pages.
- Audio and video files may be submitted up to 10 days after filing via USB thumb drive or flash drive. CDs, DVDs, cassette tapes and other unsupported media will be returned and not considered.

Grievance Process Step 1

File with the Chief Disciplinary Council

- **What Must Be In the Grievance?**
- Complainants must state whether they have tried to resolve the matter through the Client-Attorney Assistance Program (CAAP) prior to filing the grievance
- Whether they have filed or appealed a complaint against this attorney before
- Their connection to the matter
- And swear to the grievance

I hereby swear and affirm that I am the person named in Section II, Question 1 of this form (the Complainant) and that the information provided in this Grievance is true and correct to the best of my knowledge.

Signature: _____ Date: _____

Printed Name: _____

Grievance Process Step 2

Classification as Complaint or Inquiry

- **Within 30 days of receipt, the CDC shall classify each grievance as a Complaint if the grievance**
 - is filed by one of those listed above *and*
 - alleges conduct that, if true, constitutes professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct.
 - If classified as a Complaint, the Respondent is provided a copy of the Complaint with notice to respond in writing to the allegations. The notice also advises that the CDC may forward appropriate information to enforcement agencies as permitted by Texas Disciplinary Rule of Professional Conduct 6.08.
- **Or as an Inquiry if the grievance**
 - is submitted by a person other than one described above, or
 - the attorney is deceased, has relinquished their license, or is not licensed in Texas
 - alleges conduct that, even if true, does not constitute professional misconduct or disability cognizable under the Texas Disciplinary Rules of Professional Conduct.
 - If classified as an Inquiry, both parties are notified of the dismissal.

Grievance Process By the Numbers

	Active Texas Attorneys	Grievances Filed	Dismissed as Inquiry	% Dismissed at Classification	Classified as Complaint
23-24	113,771	7,985	5,326	67%	2,659
22-23	111,412	8,472	5,562	66%	2,520
21-22	108,816	7,175	4,997	70%	1,928
20-21	106,591	7,007	4,870	70%	1,946
19-20	105,125	7,505	5,123	68%	2,202
18-19	103,342	8,015	5,561	69%	2,315
17-18	102,004	7,640	5,096	67%	2,357
16-17	100,294	7,505	5,123	68%	1,362
15-16	98,671	7,760	5,054	65%	2,383

**Data from Commission for Lawyer Discipline Annual Report Archives and SBOT Department of Research and Analysis Archives*

Grievance Process Step 2

Classification as Complaint or Inquiry

➤ Why are grievances dismissed?

- It is filed by an individual not identified under TRDP Rule 1.06(G)(2).
- Concerns the outcome of a case but does not specify a violation of an ethics rules.
- Does not involve an attorney's conduct in his or her professional capacity.
- Is filed too late.
- Is duplicative or identical to a previous filing.
- Concerns an attorney who has been disbarred, has resigned, or deceased.
- Concerns a person who is not licensed as an attorney (UPL committee)
- Filed against a sitting judge (State Commission on Judicial Conduct)

Grievance Process Step 2

Classification as Complaint or Inquiry

- **Technically, there is a 3rd option:**

Discretionary Referral to the Client Attorney Assistance Program (CAAP)

- If referred, CAAP has 60 days to update the CDC as to the outcome.
- When updated, the CDC has 15 days to determine whether to dismiss as an Inquiry or process as a Complaint.
- In the 2022-2023 bar year, 844 received 844 discretionary referrals, with an 86.09% successful completion rate.

** CAAP statistics were not provided in the CFLD 2023-2024 Annual Report.*

Grievance Process Step 2-B

Appealing the Classification

- **As of September 1, 2023, either the Complainant or the Respondent may appeal the classification determination**
 - A Complainant has 30 days to appeal the inquiry classification to the Board of Immigration Appeals (BODA).
 - If reversed, the CDC must process as a Complaint; if affirmed, the Complainant has 20 days to amend the grievance and/or provide new information.
 - If the CDC classifies the amended grievance as an Inquiry, the Complainant may appeal to BODA once more, but BODA's decision is final.
 - A Respondent has 30 days to appeal the Complaint classification to the Board of Immigration Appeals.
 - This stays the 30-day deadline for response.
 - If BODA reverses, it must be dismissed as an Inquiry.
 - If affirmed, the Respondent has 30 days from the date of affirmation to respond to the Complaint.
- * In the eight months between enactment and the GOC Biennial Report, BODA reported an almost forty percent (40%) increase in appeals, one-third (1/3) being Respondent appeals.*

Grievance Process By the Numbers

	Appeals to BODA	BODA Reversed	Reversal Rate
23-24	1,152	146	12.7%
22-23	1,169	70	5.9%
22-21	1,109	60	5.4%
21-20	1,078	89	8.3%
19-20	1,362	92	6.75%
18-19	1,514	120	7.9%
17-18	1,325	135	10%
16-17	1,365	152	11%
15-16	1,434	151	10.5%

Grievance Process Step 3

Determining Just Cause

➤ **THE DREADED LETTER!**

- The CDC will investigate a Complaint to determine if there is Just Cause.
- The CDC must make a determination of Just Cause within 60 days of the date Respondent's response to the Complaint is due.
- EXCEPT the Just Cause determination is extended to 60 days after any of the following:
 - Investigatory Hearing is completed;
 - The date of compliance specified in any investigatory subpoena issued by the CDC or any district court order issued to enforce the subpoena.
- Remember that as of September 1, 2023, the Respondent may appeal the classification as a Complaint.
- The CDC routinely provides one 30-day extension. There is a form letter to sign. Just ask!
- Even if the underlying Complaint has no merit, NOT RESPONDING is its own violation under Rule 8.01(b).

Grievance Process Step 3

Determining Just Cause

➤ **Summary Disposition Setting**

- If after investigation, the CDC finds there is no Just Cause, the Complaint is placed on a Summary Disposition Panel docket.
- The CDC will present the Complaint, evidence, and recommendation for dismissal to the panel without the Complainant or Respondent present.
- The Summary Disposition Panel (SDP) will then determine whether to dismiss the Complaint or proceed.
- The SDP may meet by teleconference.
- There is no appeal of an SDP decision.
- If a SDP opts for a Complaint to proceed, it will be heard by a different panel of volunteers (if the Respondent does not choose District Court instead).

Grievance Process By the Numbers

	Classified as Complaint	Presented to Summary Disposition Panel as No Just Cause	Dismissed by Summary Disposition Panel	Percentage of Time SDP Agreed with CDC's No Just Cause Determination	Percentage of Complaints Dismissed at SDP
23-24	2,383	1,715	1,701	99.18%	71%
22-23	2,520	1,661	1,654	99.58%	66%
21-22	2,357	1,414	1,409	99.65%	60%
20-21	2,315	1,403	1,394	99.36%	60%
19-20	2,202	1,722	1,705	99.01%	77%
18-19	1,946	1,799	1,779	98.89%	91%
17-18	1,928	1,728	1,697	98.21%	88%
16-17	2,520	1,932	1,897	98.19%	75%
15-16	2,659	1,554	1,520	97.81%	57%

Grievance Process Step 3-B

Determining Just Cause Through An Investigatory Hearing

- **An investigatory hearing is a "non-adversarial" proceeding (TRDP 2.12(F)).**
- It may be by teleconference.
- The chair may administer oaths and set forth procedures for eliciting evidence, including witness testimony.
- Witness examination may be conducted by the CDC, Respondent, or Panel.
- The CDC, with the Chair's approval, may issue a subpoena that relates directly to the specific allegation of attorney misconduct for the production of documents, electronically stored information, or tangible things or to compel the attendance of a witness, including the Respondent at the investigatory hearing
- Any recording of the hearing may only be used for use in a disciplinary matter.
- It may result in a negotiated sanction, dismissal, or finding of Just Cause.
- The terms of a negotiated sanction must be in a written judgement with findings of fact and conclusions of law.
- Any judgement must be entered into the record by the Chair and signed by the CDC and Respondent.
- There is no appeal of an Investigatory Panel decision.

Grievance Process By the Numbers

	# Investigatory Hearings Resolved	# Agreed Sanctions Resulting	Percent Resulting in Sanction
23-24	358	238	66%
22-23	335	189	56%
21-22	403	196	49%

Grievance Process Step 4

Proceeding Upon a Determination of Just Cause

- **Respondent Notified and Elects District Court or Evidentiary Panel**
- At this stage, with Just Cause to pursue a Complaint of an ethical violation of the Texas Disciplinary Rules of Professional Misconduct, the Commission for Lawyer Discipline is the Client of the Chief Disciplinary Counsel
- The Commission for Lawyer Discipline is a standing committee of the State Bar of Texas, composed of six attorney members appointed by the Bar president, and six non-attorney members appointed by the Texas Supreme Court.
- Once there is a finding of Just Cause, the Respondent must be notified of the allegations and rule violations.
- The Respondent has 20 days to elect that the Complaint be heard in District Court or an Evidentiary Panel. Without a timely response, the Complaint will default to an Evidentiary Panel.
- Within 15 days of the earlier of the Respondent's election or day following expiration of deadline to elect, the CDC must appoint an Evidentiary Panel.

Grievance Process By the Numbers

	Elected Evidentiary	Defaulted into Evidentiary	Elected District Court
23-24	103	190	42
22-23	43	116	19
21-22	52	155	64
20-21	61	137	27
19-20	78	130	30
18-19	167	174	23
17-18	253	285	50
16-17	273	259	50
15-16	214	257	44

Grievance Process Step 4

Proceeding Upon a Determination of Just Cause

➤ **Evidentiary Panel Hearing**

- Within 60 days of the Respondent's election or deadline for election, the CDC must file an Evidentiary Petition with the Evidentiary Panel.
- The responsive pleading must be filed no later than 5 PM on the Monday following twenty days after service of the Petition.
- A failure to timely answer constitutes a default and all facts alleged in the Petition shall be taken as true.
- There is limited discovery and both parties have subpoena power. The Evidentiary Panel Chair decides all discovery disputes.
- The Respondent – and the Complainant – may choose to have Counsel present.
- Upon motion, the Evidentiary Panel Chair may order alternative dispute resolution.
- Both parties may offer evidence, examine witnesses, and present argument.
- The burden of proof is on the CFLD to prove the material allegations by a preponderance of the evidence.
- A record of the proceedings are made.
- Hearings must be set with 45 days notice not later than 180 days after the answer is filed, except for good cause shown. If Respondent fails to answer, the default hearing may be set at any time ten days after the answer date without further notice to Respondent.

Grievance Process Step 4

Proceeding Upon a Determination of Just Cause

- **Evidentiary Panel Hearing**
- After hearing, the Evidentiary Panel shall issue a judgement within 30 days. The Evidentiary Panel may
 - Dismiss the proceeding and refer to voluntary mediation and dispute resolution;
 - Find that Respondent suffers a disability and forward to BODA for referral to a district disability committee;
 - Find that Professional Misconduct occurred and impose sanctions. Where Professional Misconduct is found, the judgement must include findings of fact, conclusions of law, and the sanctions to be imposed.
- Within 30 days, the Respondent or Commission may appeal the decision to BODA. BODA may
 - Affirm, in whole or in part;
 - Modify the judgment and affirm as modified;
 - Reverse in whole or in part and render what should have been rendered;
 - Reverse and remand for further proceedings by the Evidentiary Panel or a statewide grievance committee panel;
 - Vacate the judgement and dismiss the case;
 - Dismiss the appeal.
- BODA's decision may be appealed to the Texas Supreme Court.

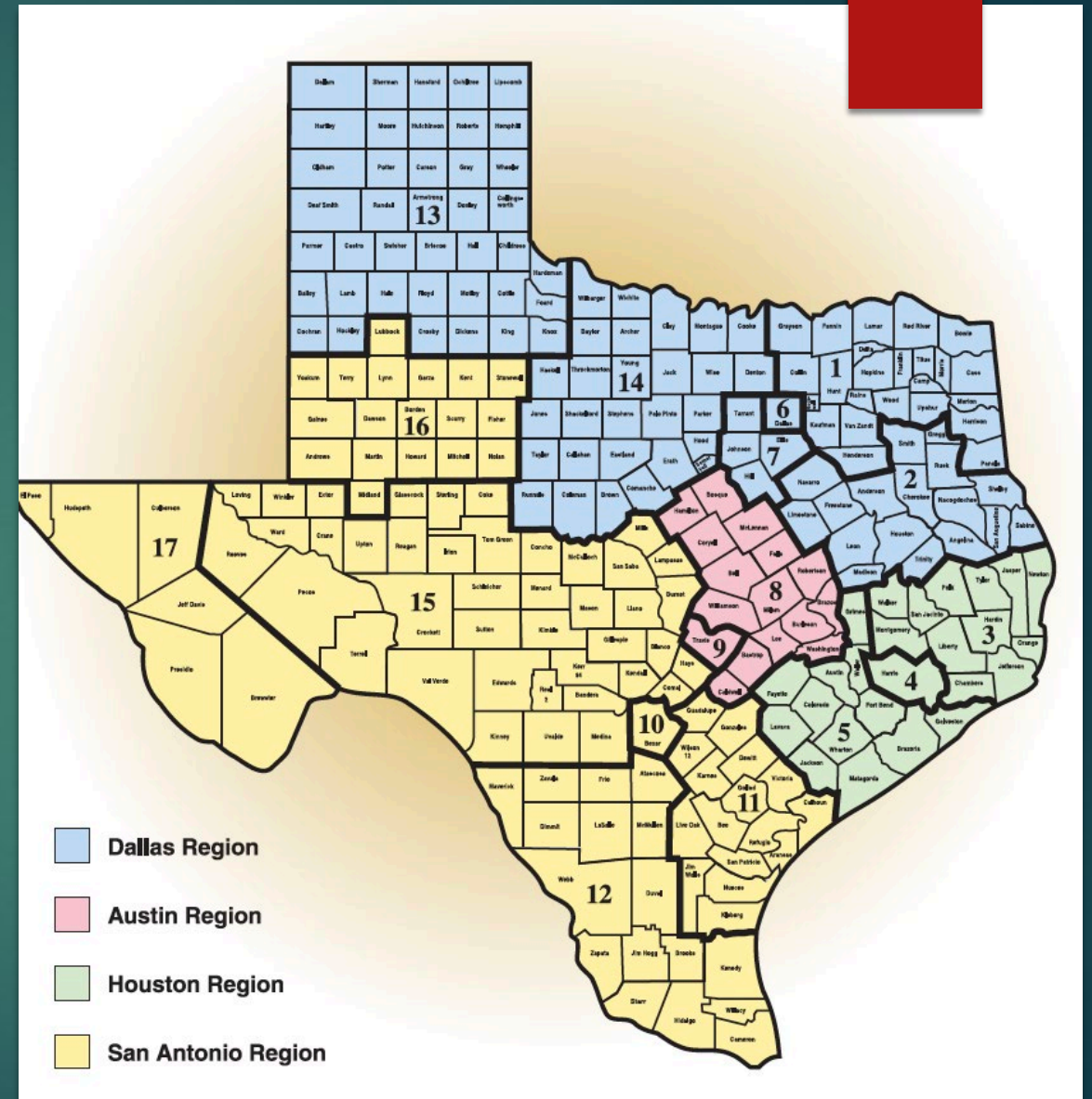
Grievance Process Step 4

Proceeding Upon a Determination of Just Cause

- **Evidentiary Panel Hearing – Who Are These People?**
- Currently, about 380 Texans serve on local grievance committees.
- The State of Texas is divided into 17 Disciplinary Districts with elected District Directors.
- Each elected Director nominates, and the Bar President appoints, the Grievance Committee members.
- Committees generally have 9 members residing or working in the district, 2/3 attorneys licensed to practice law in Texas and in good standing, and 1/3 public members without financial interest in the practice of law.
- Committees receive annual training on the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure.
- Each member serves a 3-year term with the option to renew for a 2nd 3-year term. There must be a 3-year gap before a member is eligible to serve on a Grievance Committee again.
- Grievance Panels serve in 3 distinct formats: on the Summary Disposition Panel, the Investigatory Hearing Panel, and the Evidentiary Hearing Panel.
- If a panel member served on the Summary Disposition Panel or Investigatory Hearing Panel, they cannot then be on the EVH for the same Complaint.
- A panel member is disqualified or subject to recusal is a district judge would under similar circumstances be disqualified or recused.

Grievance Process By the Numbers

23-24 Diversity Committee	Attorney Committee Membership	State Bar of Texas Membership
Male	58%	61%
Female	41%	39%
Not Specified	1%	-
White	64%	76%
Hispanic/Latino	11%	11%
Black/African American	6%	6%
Asian/Pacific Islander	3%	4%
American Indian/Alaska Native	1%	<1%
Other	15%	2%



**The race and gender information is based on voluntarily provided data. Not all attorneys respond and therefore it may not be a complete picture.*

Grievance Process Step 4

Proceeding Upon a Determination of Just Cause

➤ **District Court Election**

- If the Respondent timely elects District Court, with or without a jury, the CDC within 60 days must send a copy of the Petition to the Presiding Judge of the administrative judicial region covering the county of venue.
- The Presiding Judge shall assign to preside over the case an active District Judge whose district does not include the county of venue
- Once the trial judge is assigned, the CDC shall promptly file the Petition and Presiding Judge's assignment order with the District Clerk of the County of Venue. The Respondent shall then be served as in civil cases generally.
- The trial and discovery shall be conducted as in civil cases generally, with some exceptions.

Grievance Process Step 5

Dismissal OR Professional Misconduct Found -Sanctions Imposed

- **Guidelines For Imposing Sanctions**
- The tribunal may conduct a separate hearing related to Sanctions.
- Per the Guidelines, the tribunal should consider the
 - duty violated,
 - Respondent's level of culpability,
 - potential for actual injury caused by the misconduct, and
 - existence of aggravating or mitigating factors.
- Guidelines are designed to provide consistency but permit flexibility.
- Guidelines generally cover Violations of Duties Owed to
 - Clients,
 - the Legal System,
 - Public, and
 - other Duties as a Professional.
- Guidelines consider prior discipline orders, and list sample aggravating and mitigating circumstances.

Grievance Process By the Numbers

	Total Sanctions	Disbarments	Reignation in Lieu of Discipline	Suspensions	Public Reprimands	Private Reprimands	Grievance Referral Program
23-24	314	18	12	74	40	91	79
22-23	316	24	17	90	35	92	58
21-22	400	21	27	120	39	94	99
20-21	372	18	15	123	36	100	80
19-20	403	21	9	142	39	106	86
18-19	414	14	17	152	32	124	75
17-18	332	21	23	116	25	70	77
16-17	342	20	28	126	30	89	49
15-16	328	22	27	135	30	67	47

Grievance Process By the Numbers

	Active Texas Attorneys	Grievances Filed	Classified as Complaint	Total Sanctions
23-24	113,771	7,985	2,659	314
22-23	111,412	8,472	2,520	316
21-22	108,816	7,175	1,928	400
20-21	106,591	7,007	1,946	372
19-20	105,125	7,505	2,202	403
18-19	103,342	8,015	2,315	414
17-18	102,004	7,640	2,357	332
16-17	100,294	7,505	1,362	342
15-16	98,671	7,760	2,383	328

Grievance Response Tips

- **RESPOND!**
- It doesn't matter how frivolous it is, or how angry, busy, or panic-stricken you are, even if the underlying Complaint will not be meritorious, failing to respond is its own Rule Violation under TDRPC Rule 8.01(b)!
- Calendar it, appeal, or ask for an extension, but respond timely!
- **GET A SECOND PAIR OF EYES!**
- You are too attached and the stakes are too high. This is the same advice you would give your client so TAKE IT! At least get someone to double-check you (filter out the offensive tone, ensure the response is on point, accurate, and complete, etc.), but better, yet hire someone to represent you.
- **USE THE RULES TO FRAME YOUR RESPONSE**
- To make it easy for the investigator to find in your favor and to ensure you've covered everything, use the Rules themselves to show how you complied with your obligations under them. And use the record, not your memory to prove it.
- **ONLY DISCLOSE CLIENT INFORMATION TO THE EXTENT NECESSARY**
- That is the Rule: to the reasonable extent necessary. TDRPC 1.05(c)(5) and (d)(2)(ii)-(iv)
- **CHECK YOUR MALPRACTICE POLICY**
- Some cover defense of grievances. Also check to see whether you need to report the grievance and if so, by when.

Avoiding a Grievance Altogether

➤ Who Is Getting Grievated and Why?

- As reported by CDC Seana Willing in the Texas Bar Journal, “in the 2021-2022 bar year, solo and small firm (2-5 attorneys) practitioners received 70% of all grievances filed by complainants and 86% of all sanctions issued by the State Bar of Texas.”
- The top Rule Violations for Grievances year after year are:
 - Failure to Respond to (or Cooperate with) a Grievance: TDRCP 8.01(b) (and 8.04(a)(4) and (8))
 - Failure to Communicate: TDRCP Rule 1.03(a) and (b)
 - Neglect: TDRCP Rule 1.01(b)
 - Failure to Safeguard Client Property: TDRCP 1.15
- The top areas of law grievated are consistently: Civil, Family, and Criminal.

***Michael S. Truesdale & Seana Willing, What Texas Lawyers Need to Know about the Texas Grievance Process: Part Three: Avoiding Common Violations, 86 TEX. B.J. 26 (January 2023).*

Grievance Process By the Numbers

23-24	State Bar of Texas Membership	314 Sanctions Imposed
Male	61%	74%
Female	39%	26%
White	76%	53%
Hispanic/Latino	11%	19%
Black/African American	6%	16%
Asian/Pacific Islander	4%	3%
American Indian/Alaska Native	<1%	-
Other	2%	9%

**The race and gender information is based on voluntarily provided data.
Not all attorneys respond and therefore it may not be a complete picture.*

Other Parties In Attorney Discipline

- **BODA**
- The 12 attorneys appointed by the Texas Supreme Court hear and decide seven types of attorney discipline and disability matters, including original jurisdiction over compulsory and reciprocal discipline cases and revoking fully- or partially-probated suspensions; appellate jurisdiction over classification decisions and evidentiary panel judgments; exclusive jurisdiction over disability suspensions; and concurrent jurisdiction over petitions to terminate disability suspensions.
- **Client Attorney Fund Subcommittee**
- SBOT standing committee considers applications to the Client Security Fund for those that can prove financial harm due to the dishonest conduct of a Texas attorney. The Fund is administered by an employee of the CDC, who acts as administrator and legal counsel to the Fund, investigating and presenting requests to the Subcommittee. In 23-24, 205 applications were considered, 121 approved, resulting in grants totaling \$889,140.
- **Ombudsman**
- **Advertising Review Committee**
- **Law Practice Management Committee**
- **Committee on Disciplinary Rules and Referenda**
- **Professional Ethics Committee**
- **Unauthorized Practice of Law Committee**

Ways to Support Each Other

➤ **Aging Attorney Population**

- Catching the cognitively impaired (whether by age or other causes) before entering the disciplinary system is hard as many are solo practitioners, lack self-awareness of their issues, and/or are afraid to reach out for assistance.
- Identify and check-in regularly on older solo attorneys that might not otherwise have one-on-one peer support and assistance.
- SBOT and TLAP websites offer an impressive list of resources, programs, articles, videos, and CLEs for those experiencing general aging issues or cognitive impairment, as well as for those supporting them.
- Participate in mentorship programs (formal or informal) to reduce the growing justice gap due to the “gray tsunami”.

➤ **Texas Lawyers Assistance Program**

- TLAP is anonymous, has an amazing team and resources to help law students to aging attorneys, young lawyers to judges.
- They can help with stress and anxiety, depression and bipolar, substance abuse, cognitive decline, suicide prevention, and wellness.

➤ **Succession Planning Custodian**

- Be someone’s designated custodian and find and designate your own custodian in case something happens.

➤ **Get Involved (‘The More You Know’)**

- Reach out to your bar director to volunteer on a grievance committee; fill out the standing committee interest form, check out the Bar Service Opportunities under SBOT’s For Lawyers’ page, etc.

Additional Resources

- [Texas Disciplinary Rules of Professional Conduct \(Amended October 1, 2024\)](#)
- [Texas Rules of Disciplinary Procedure \(Amended October 1, 2024\)](#)
- [Texas Young Lawyers Association: Grievance and Malpractice 101 Guide](#)
- [CDC Seana Willing's 3-part series on Texas Attorney Grievance in the Texas Bar Journal Archives](#)
- [The Commission for Lawyer Discipline's Annual Report](#)
- [TexasBarPractice.com](#)
- [Texas Center for Legal Ethics](#)
- [Texas Lawyers' Insurance Exchange Articles](#)
- [Texasbar.com: Responding to a Complaint and Grievance and Ethics Information](#)
- [The back of the Texas Bar Journal](#)
- [Texas Bar Blog](#)
- [TXGOC.com](#)

Reach out!

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