

GRIEVANCES:

Understanding The Process, Tips for Responding, the Most Frequent Complaints and Tips on How to Avoid them Altogether

R. Scott Downing

scott@momnd.com

<http://www.momnd.com>

R. Porter Corrigan, II

porter@orsinger.com

<http://www.momnd.com>

**McCurley, Orsinger, McCurley,
Nelson & Downing, L.L.P.**

Dallas Office:

5950 Sherry Lane, Suite 800

Dallas, Texas 75225

(214) 273-2400

and

San Antonio Office:

1717 Tower Life Building

San Antonio, Texas 78205

(210) 225-5567

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GRIEVANCES: UNDERSTANDING THE PROCESS, TIPS FOR RESPONDING, THE MOST FREQUENT COMPLAINTS AND TIPS ON HOW TO AVOID THEM ALTOGETHER

I. INTRODUCTION

Lawyers in the state of Texas have an obligation to maintain a high standard of ethical conduct towards their clients. The State Bar of Texas investigates and prosecutes complaints of professional misconduct against lawyers licensed in this state to enforce this high standard. For purposes of professional discipline, the ethical rules that Texas attorneys are charged with following are called the Texas Disciplinary Rules of Professional Conduct, which can be found online at www.texasbar.com. These rules are intended to protect the public by providing a forum for investigating and addressing complaints about attorneys regarding professional misconduct. Procedurally, the rules which provide the mechanism through which grievances are processed, investigated and prosecuted are referred to as the Texas Rules of Disciplinary Procedure, and can be found at the same website listed above.

The Texas attorney discipline system is administered by the Office of Chief Disciplinary Counsel, which has been referred to as the “Bar’s law office.”¹ The body charged with overseeing the Office of Chief Disciplinary Counsel is called the Commission for Lawyer Discipline, and consists of six attorney members selected by the Bar’s president, and six public, non-attorney members who are appointed by the Supreme Court of Texas.

The attorney grievance system in Texas does not attempt to handle all disputes between

¹ State Bar of Texas Commission for Lawyer Discipline, Annual Report, June 1, 2009 – May 31, 2010.

lawyers and clients, but rather only the disputes that involve professional misconduct. Being dissatisfied with the results of trial because of the strategy employed by the attorney for example, does not necessarily mean that the attorney committed professional misconduct.

The purpose of this article is to shed some light on the grievance process generally, as well as to outline items that should be included in a response to a grievance that has been filed, and finally to touch on some of the most frequent complaints, and what you can do to avoid them. The author would like to acknowledge that a wealth of information used in constructing this paper was adapted from the State Bar of Texas Commission for Lawyer Discipline Annual Report, June 1, 2009 – May 31, 2010.

II. GRIEVANCE PROCEDURE²

A. Filing the Grievance Form

The grievance process begins when a Grievance Form is filed with one of the Chief Disciplinary Counsel regional offices in Texas.³ This form can be found in a variety of places, but most easily obtained through the www.texasbar.com website.

It is important to note that a client’s signature on the Grievance Form is sufficient to waive the attorney-client privilege that keeps communications between the client and the attorney confidential. Information about the pending grievance itself is kept confidential and is not subject to disclosure unless the attorney whom the grievance is in reference to waives the

² Attached as Appendix A is a flow chart entitled “Processing a Grievance” which has been taken from the State Bar of Texas Annual Report, June 1, 2009 – May 21, 2010.

³ There are four Chief Disciplinary Counsel regional office, one located in each of Austin, Dallas, Houston, and San Antonio.

confidentiality or the disclosure is court ordered.⁴ If the alleged professional conduct is found to have actually been committed by the attorney, information about the grievance is no longer confidential.

Generally, there is a four-year statute of limitations from the time the alleged misconduct occurs for a person to file a grievance with the State Bar.

B. “Classification Stage” – Inquiry vs. Complaint⁵

Upon receiving the filed grievance, it is the responsibility of the Chief Disciplinary Counsel to determine whether the grievance, on its face, alleges professional misconduct. An attorney is only subject to discipline if they have violated the Texas Disciplinary Rules of Professional Conduct. In the event it is determined that the grievance fails to allege professional misconduct, the submission is classified as an Inquiry and is dismissed as such. On the other hand, if professional misconduct is alleged, then it is classified as a Complaint, and subsequently sent to the respondent attorney to solicit a response. The classification between Inquiry and Complaint must be made within 30 days of the filing of the grievance.

For those grievances that are dismissed as Inquiries, the person who filed does have the right to appeal the Counsel’s classification to the Board of Disciplinary Appeals (hereinafter “BODA”). BODA consists of an independent 12 attorney tribunal that has been appointed by the Supreme Court of Texas. Of the 2,095 appeals that were filed during the 2009-2010 Bar year, BODA reversed 232 of these, resulting in an 11 percent

⁴ Texas Rules of Disciplinary Procedure [hereinafter “TRDP”] 2.16 & 6.08.

⁵ During the 2009 – 2010 Bar year, 7,233 grievances were filed. Of the grievances considered between June 1, 2009 and May 31, 2010, 65 percent (5,142) were dismissed as inquiries. State Bar of Texas Commission for Lawyer Discipline Annual Report, June 1, 2009 – May 31, 2010.

reversal rate.⁶ Upon reversal, the grievance is sent back to the Office of Chief Disciplinary Counsel and is then processed as a Complaint.

C. Responding to the Complaint

Once the Complaint has been received by the respondent attorney, that attorney has 30 days from the date of receipt to respond.⁷ Failure to respond to a Complaint has the potential to compound the original misconduct and increase the severity of the penalty that may be imposed. To be sure, Texas Disciplinary Rules of Professional Conduct 8.04(a)(8) states in pertinent part that a lawyer shall not “fail to timely furnish to the Chief Disciplinary Counsel’s office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure...” Thus, failing to timely respond may be considered professional misconduct in its own right. Ignoring the grievance will not make it go away. In fact, in the opinion of this author, this is the most common grievance to come before my panel.

Some helpful tips for responding to a grievance include the following:

- Respond specifically to each Rule violation that has been asserted;
- Be detailed in the response, and elaborate on why or how the alleged Rule violation did not occur as provided for in the Complaint;
- Attach exhibits to the response to further arguments that the alleged professional conduct did not in fact occur, it is better to be over inclusive than under inclusive.

D. Reacting to the Response

⁶ State Bar of Texas Commission for Lawyer Discipline Annual Report, June 1, 2009 – May 31, 2010.

⁷ TRDP 2.10

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First appeared as part of the conference materials for the
11th Annual Family Law on the Front Lines session

"Grievances: The Process, Responses and Most Frequent Complaints"