

# **AVOIDING A GRIEVANCE**

**OFFICE OF CHIEF DISCIPLINARY COUNSEL  
STATE BAR OF TEXAS**

## AVOIDING A GRIEVANCE

### I. INTRODUCTION

There are nearly 100,000 attorneys currently licensed to practice in Texas<sup>1</sup>. In any given year, more than 7,500 written complaints alleging Professional Misconduct, or Grievances, will be filed against Texas attorneys with the Office of the Chief Disciplinary Counsel.<sup>2</sup>

If you practice law in Texas for ten years, you will probably have a grievance filed against you. If you practice family law, criminal law or represent plaintiffs in personal injury cases, you are more likely to have a grievance filed against you than if your practice is limited to other areas.<sup>3</sup> It may be encouraging to know that less than five percent of all grievances filed annually will ultimately result in a sanction being imposed against the Respondent attorney.

This paper is intended to give an overview of the Texas attorney discipline system and the processing of grievance complaints and provide practical advice on responding to a grievance if one is filed against you. The paper will also examine common areas of grievance complaints and the applicable law, to provide some practice suggestions that may help prevent a grievance from ever being filed.

### II. UNDERSTANDING THE GRIEVANCE PROCESS

#### A. WHAT IS A GRIEVANCE?

Any written statement apparently intended to allege Professional Misconduct by a lawyer and received by the Office of the Chief Disciplinary Counsel constitutes a "Grievance".

TRDP 1.05(R)<sup>4</sup>. The filing of a grievance against a lawyer triggers the disciplinary process. TRDP 2.10.

There is no standing or privity requirement for a grievance filing. Consequently, not only are grievances received from clients and former clients, but they are also received from opposing counsel, judges and court personnel, law partners and associates, opposing parties, etc.

If the CDC is otherwise made aware of alleged Professional Misconduct by an attorney, the CDC may also initiate a grievance complaint. All the processes described herein regarding a grievance that starts with a written statement sent to the CDC also apply to a grievance initiated by the CDC.

#### B. CLASSIFICATION OF GRIEVANCES

The Chief Disciplinary Counsel ("CDC") is required to review each grievance and any supporting documentation submitted to determine whether the grievance constitutes an Inquiry or a Complaint. TRDP 2.10. This determination must be made within thirty days of receipt of the complaint. *Id.* All grievances are reviewed for classification by an attorney at the CDC offices in Austin.

An Inquiry is any written matter concerning attorney conduct that, even if true, does not allege professional misconduct or disability. TRDP 1.06(S). In contrast, a Complaint is a written matter that, either on the face thereof or upon screening and investigation, alleges professional misconduct or a disability, or both. TRDP 1.06(G). It is important to note that this initial review is made without the benefit of any response or information from the attorney.

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<sup>1</sup> State Bar of Texas Attorney Statistical Profile (2011-12)

<sup>2</sup> Commission for Lawyer Discipline Annual Report (June 1, 2011 - May 31, 2012)

<sup>3</sup> Commission for Lawyer Discipline Annual Report (June 1, 2006 - May 31, 2007)

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<sup>4</sup> "TRDP" refers to the Texas Rules of Disciplinary Procedure.

If the CDC determines that the grievance constitutes an Inquiry only, the grievance is dismissed and both the Respondent attorney and Complainant who filed the grievance are notified of the dismissal. Possible reasons a grievance will be classified as an Inquiry include:

- The complaint concerns the outcome of a case without identifying any ethical violation
- Filing made outside the applicable limitations period<sup>5</sup>
- The same complaint was previously filed
- The attorney is disbarred, has resigned or is deceased

If the CDC determines a grievance constitutes a Complaint, the Respondent is provided a copy of the Complaint with notice to respond in writing within 30 days. TRDP 2.10

The Complainant has the right to appeal a decision by the CDC to dismiss the grievance as an Inquiry to the Board of Disciplinary Appeals (“BODA”). If BODA affirms the dismissal decision, the Complainant has the ability to re-file the grievance one-time with additional or new evidence. *Id.* A Respondent attorney no longer has the right to appeal a decision by the CDC to classify the grievance as a Complaint. *Id.*

#### **C. WRITTEN RESPONSE**

As noted above, an attorney has thirty days to provide a written response to grievance. The time to respond begins to run from the date the Respondent attorney receives notice of the grievance from the CDC. *Id.* The attorney must also serve a copy of the response upon the Complainant who filed the grievance. *Id.* Additional information may be provided by

either the Complainant or Respondent after the initial filings.

Failure to provide a written response to a grievance can result in an allegation of Professional Misconduct even if the underlying complaint is not found to be properly supported. TDRPC 8.04(a)(8).<sup>6</sup>

#### **D. JUST CAUSE DETERMINATION**

Once a response is received from the Respondent or once the time to respond has passed, a timely determination must be made as to whether there is of Just Cause to proceed further. Just Cause is defined as “such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either a suspension as an attorney licensed to practice law in the State of Texas or probation.” TRDP 1.06(U).

For grievances filed before January 1, 2004, an investigatory panel of the grievance committee made the determination as to whether or not there was Just Cause to proceed. This determination was made following a hearing at which both the Complainant and Respondent were invited to appear. This hearing was mandated for every matter classified as a Complaint regardless of whether the response received from the Respondent and/or further investigation by the CDC clearly established no professional misconduct.

Investigatory hearings were eliminated by the 2004 revisions to the procedural rules. The CDC now makes the determination of Just Cause within 60 days of the Respondent’s response date. If, after investigation, the CDC determines that Just Cause does not exist to proceed upon the Complaint, the CDC places the Complaint on a *Summary Disposition Panel* docket. TRDP 2.13. At this docket, the CDC

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<sup>5</sup> See TRDP 15.06; four year period of limitations generally with certain exceptions

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<sup>6</sup> “TDRPC” means Texas Disciplinary Rules of Professional Conduct.

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