

The University of Texas School of Law
17th Annual Advanced Texas Administrative Law Seminar

September 1-2, 2022, AT&T Conference Center

Austin, Texas

Board of Disciplinary Appeals

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BOARD OF DISCIPLINARY APPEALS

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MICHAEL C. GROSS
CURRICULUM VITAE

EDUCATION

B.A., Trinity University, San Antonio, Texas, 1984
J.D., St. Mary's University, San Antonio, Texas, 1987

PROFESSIONAL ACTIVITIES AND RECOGNITIONS

Judge Advocate, U.S. Marine Corps, 1988-1992
Associate, Zimmermann & Lavine, P.C., Houston, Texas, 1992 - 1996
Law Office of Michael C. Gross, P.C., San Antonio, Texas, 1996 - 2012
Gross & Esparza, P.L.L.C., San Antonio, Texas, 2012 - Present
Board Certified, Criminal Trial Advocacy, National Board of Trial Advocacy, 1997
Board Certified, Criminal Law, Texas Board of Legal Specialization, 1995
Board Certified, Criminal Appellate Law, Texas Board of Legal Specialization, 2011
President, Texas Criminal Defense Lawyers Association, 2021-2022
President, San Antonio Criminal Defense Lawyers Association, 2011-2012
Defender of the Year, San Antonio Criminal Defense Lawyers Association, 2008
Defender of the Year, San Antonio Criminal Defense Lawyers Association, 2009
Named in Best Lawyers in America, 2005 - 2022
Named Best Lawyers San Antonio Non-White-Collar Lawyer of the Year - 2015, 2017
Named in Texas Super Lawyers in Texas Monthly Magazine, 2004 - 2022
Named Top 50 Texas Super Lawyers in Central and West Texas Region, 2010 - 2012, 2014
Named in Best Lawyers in San Antonio by Scene in San Antonio Magazine, 2004 - 2022
Named Top 10 Criminal Defense Attorneys in San Antonio by Scene Magazine - 2013
AV rated by Martindale Hubble

COURT ADMISSIONS

Supreme Court of the United States, 1991
Supreme Court of the State of Texas, 1987
United States Court of Appeals for the Armed Forces, 1990
United States Court of Appeals for the Fifth Circuit, 1990
United States Court of Appeals for the Tenth Circuit, 1998
United States District Court for the Northern District of Texas, 1990
United States District Court for the Southern District of Texas, 1991
United States District Court for the Eastern District of Texas, 1991
United States District Court for the Western District of Texas, 1992

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I. The attorney grievance and discipline systems

A. Texas Supreme and Court constitutional and statutory responsibilities

The Supreme Court of Texas has constitutional and statutory responsibility over the attorney grievance and discipline systems.

B. State Bar of Texas responsibilities

The Supreme Court has delegated the administration of the attorney grievance and discipline systems to the State Bar of Texas. The Texas attorney discipline system is governed by the Texas Disciplinary Rules of Professional Conduct (TDRPC) and the Texas Rules of Disciplinary Procedure (TRDP). 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.

C. Commission for Lawyer Discipline

Also involved in the system is the Commission for Lawyer Discipline which is a permanent committee of the State Bar responsible for the administration of the attorney discipline system. The Commission 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 Chief Disciplinary Counsel (CDC) and 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. 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 Supreme Court of Texas.

D. Chief Disciplinary Counsel

The Commission is represented by the Chief Disciplinary Counsel (CDC) of the State Bar. The CDC is a State Bar office that acts as counsel for the Commission and examines and investigates each grievance filed. The CDC is selected by the Commission and then voted on by the State Bar of Texas Board of Directors. The Texas attorney discipline system is administered by the CDC whose work is overseen by the Commission for Lawyer Discipline. The current CDC is Seana Willing. The CDC represents the Commission in disciplinary litigation. The CDC operates the discipline system. In addition to its headquarters in Austin, the 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.

E. District grievance committees

Local volunteers serve on grievance committees. Currently, 387 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.

The district grievance committees perform two critical roles in the discipline system: 1) Review complaints presented by the Chief Disciplinary Counsel 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.

F. 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’s Client Attorney Assistance Program (CAAP), and at courthouses, law libraries, legal aid organizations and local bar associations across the State.

The filing of a written grievance with any one of the Chief Disciplinary Counsel’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, the 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. If the grievance does not allege professional misconduct, it is classified as an Inquiry and dismissed. If the grievance alleges professional misconduct, it is classified as a Complaint and sent to the respondent lawyer for a response.

Grievances are dismissed for various reasons, including the following: (1) grievance does not specify a violation of an ethics rule; (2) grievance does not involve a

lawyer’s conduct in his or her professional capacity; (3) grievance is filed too late; (4) grievance is duplicative or identical to a previous filing; (5) grievance concerns a lawyer who has been disbarred, has resigned, or is deceased; (6) grievance concerns a person who is not licensed as an attorney (handled by the Unauthorized Practice of Law Committee); or (7) grievance is filed against a sitting judge (handled by the State Commission on Judicial Conduct).

The person who filed the grievance has the right to appeal the CDC’s classification decision to dismiss the grievance as an Inquiry to the Board of Disciplinary Appeals (BODA). BODA is an independent 12-attorney tribunal, appointed by the Supreme Court of Texas. When BODA reverses a classification decision, the grievance is sent back to the CDC and is processed as a Complaint.

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, the CDC, through its investigation, must determine whether there is Just Cause to believe that professional misconduct occurred.

If the Chief Disciplinary Counsel 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 the CDC’s determination.

All information and results of the CDC’s investigation is presented to the panel at a docket hearing without the presence of either the complainant or respondent. If the panel accepts the CDC’s determination, the Complaint will be

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