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The Texas Attorney Disciplinary Process (AKA The Grievance System)

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Ms. Kawaja is a graduate of South Texas College of Law and has been licensed to practice in Texas since 1998. Her background and experience includes working at the Court of Appeals for the First District of Houston as a briefing attorney to Justice Michol O'Connor and Justice F. Lee Duggan, Jr. Before becoming a solo practitioner, her private-practice experience included appeals in state and federal court involving class actions, MDL litigation, and general civil litigation in and out of Texas. As a solo practitioner, her practice has included student disciplinary proceedings in secondary education, Title IX actions, disciplinary/grievance proceedings involving attorneys, commercial disputes, personal injury, probate disputes, construction defects, and general civil litigation/appeals in state and federal court.

Between 2019 and 2021, Ms. Kawaja served as the Chair of the District 5 Grievance Committee in Texas. She served and participated in the attorney disciplinary process as a Grievance Committee member between 2015 and 2021. She is a frequent speaker to attorneys at Continuing Legal Education courses regarding the attorney disciplinary process.

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Kennon is a partner at Scott Douglass & McConnico LLP. She joined the firm in 2011, after serving as the Rules Attorney for the Supreme Court of Texas, working as an associate for Baker Botts LLP, and clerking for former Chief Justice Wallace B. Jefferson of the Supreme Court of Texas. As the Rules Attorney, Kennon handled inquiries and issues relating to rules and assisted the court with promulgating and amending rules. At Scott Douglass & McConnico, her practice focuses on general civil litigation. She also handles appeals periodically and advises on rule-related matters. She has represented a broad range of clients, including governmental entities, businesses, firms, lawyers, judges, associations, and individuals. Her education includes the University of Texas at Austin and the University of Texas School of Law. She served as the Head Teaching Quizmaster in law school.

Kennon is a frequent speaker for Continuing Legal Education courses. In addition, she is a published co-author of law-review articles and three editions of a book on discovery practices in Texas.

Kennon is also dedicated to serving the community. She does pro bono work on a regular basis. She has served as a member of the Texas Commission to Expand Civil Legal Services, a member of the Supreme Court of Texas Task Force for Rules in Expedited Actions, the President of the Austin Bar Association, the President of the Austin Young Lawyers Association, the Chair of the State Bar's Court Rules Committee, the Chair of the Austin Bar Foundation, the Editor-in-Chief for Austin Lawyer, a board member for Texas Folklife and Austin Friends of Traditional Music, and a board member and secretary for the Texas Legal Services Center. She currently serves as a member of the American Law Institute, the Texas Supreme Court Advisory Committee, the Editorial Board for The Advocate, the Supreme Court of Texas Remote Proceedings Task Force, the State Bar's Board of Directors, the Texas Access to Justice Commission, and the Austin Bar Association's Diversity, Equity, and Inclusion Committee.

Kennon received the Joseph C. Parker Diversity Award from the Austin Bar Association in 2022, the TCWLA Litigation/Appellate Attorney Award in 2018, a "Standing Ovation" State Bar Volunteer Award in 2017, and a Special Commendation of the Supreme Court of Texas and State Bar in 2011, for her work on Texas rules. She was named as a Texas Rising Star selectee in 2008, 2009, and 2013 through 2017 and as a Texas Super Lawyers selectee in 2019 through 2022. In addition, in 2020 through 2022, she was named by Austin Monthly as one of Austin's Top Attorneys in Civil Litigation and identified as a Chambers USA Band 1 recognized practitioner in Litigation: General Commercial in "Austin & Surrounds" in Texas.

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THE TEXAS ATTORNEY DISCIPLINARY PROCESS (AKA THE GRIEVANCE SYSTEM)¹

I. INTRODUCTION

In Texas, the attorney disciplinary process (AKA “the grievance system”) is governed by the Texas Disciplinary Rules of Professional Conduct (“TDRPC”) and the Texas Rules of Disciplinary Procedure (“TRDP”).² The TDRPC “define proper conduct for purposes of professional discipline[,]” while the TRDP “provide the mechanism by which grievances are processed, investigated, and prosecuted.” State Bar of Tex., Grievance and Ethics Info., https://www.texasbar.com/AM/Template.cfm?Section=Disciplinary_Process_Overview&Template=/CM/HTMLDisplay.cfm&ContentID=43617. Law students and attorneys often learn about ethics rules but not disciplinary procedure. This paper focuses on the procedure—i.e., what happens after a grievance is filed in regard to an attorney’s conduct. The corresponding presentation will focus on both the procedure and the substantive ethics rules, including an overview of common reasons for grievances and guidance on how to avoid grievances.

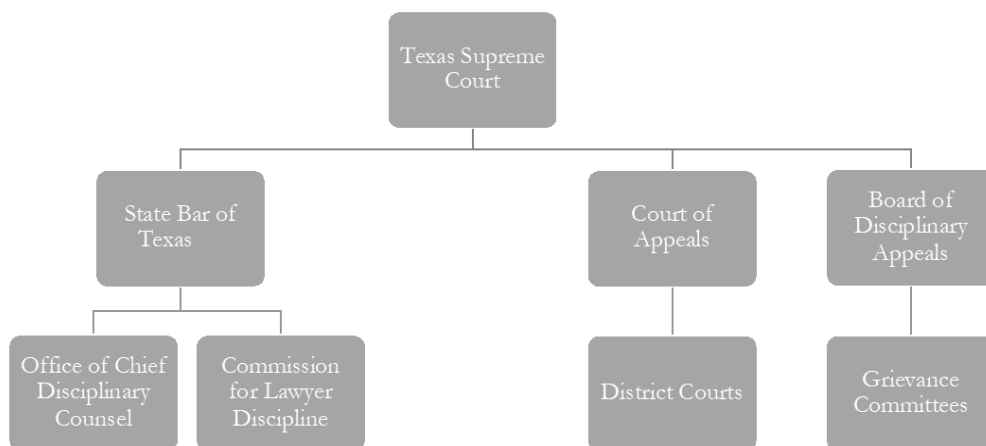
If you are on the receiving end of a grievance and (like other attorneys who have been in your shoes) feeling a range of emotions and uncertainty about how to navigate the disciplinary process, the authors of this paper encourage you to seek counsel from an attorney who regularly defends respondent attorneys in the disciplinary process and to do so as promptly as possible after learning about the grievance. We hope this paper will also help to demystify the process. The State Bar of Texas (“State Bar”) also provides useful, free information, at the link in the paragraph above.

This paper addresses two main topics: (1) the derivation of power to regulate the practice of law in Texas, and (2) the disciplinary process in Texas, primarily as set out in the TRDP and statutes. The system for processing a grievance is presented graphically in attached **Appendix A**, prepared by Ms. Kawaja. The complete TRDP are attached as **Appendix B**. The 2021–2022 annual report of the Commission for Lawyer Discipline (“the Commission”) is attached as **Appendix C**, and statistics from the Office of Chief Disciplinary Counsel (“CDC”) are attached as **Appendix D**.

II. THE STRUCTURE OF THE DISCIPLINARY SYSTEM

The Texas disciplinary system is a mixed, multi-level process that includes several entities: grievance committees, Texas state district courts, Texas courts of appeals, the Board of Disciplinary Appeals (“BODA”), the Commission, the CDC, the State Bar, and ultimately the Supreme Court of Texas (“the Court”). The diagram below is instructive.

STRUCTURE OF TEXAS ATTORNEY DISCIPLINARY SYSTEM



The following subsections of this paper address this system as set forth in the Texas Constitution, the Texas Government Code, and the TRDP. They also address the role of each of the entities referenced in the diagram above.

¹ This paper was prepared originally by Anita Kawaja in September 2020. With Ms. Kawaja’s permission, Kennon L. Wooten updated and revised the paper in January 2023.

² Current, searchable versions of both sets of rules are available at <https://www.txcourts.gov/rules-forms/rules-standards/>.

A. The Supreme Court of Texas Has the Power to Regulate the Practice of Law

The Court's inherent power to regulate the practice of law in Texas is derived from the separation of powers that is mandated by the Texas Constitution.

Sec. 1. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and *those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.*

Tex. Const. Art. II, § 1 (emphasis added).

The Court's power is recognized by the State Bar Act set forth in Chapter 81 of the Texas Government Code. *See* Tex. Gov't Code §§ 81.001–81.156. The State Bar Act is expressly “in aid of the judicial department's powers under the constitution to regulate the practice of law, and not to the exclusion of those powers.” Tex. Gov't Code § 81.011(b).

The Court promulgates the TRDP consistent with the State Bar Act's requirements for the disciplinary system. *See* Tex. Gov't Code §§ 81.072, 81.0753; TRDP Preamble (“The Supreme Court of Texas has the constitutional and statutory responsibility within the State for the lawyer discipline and disability system, and has inherent power to maintain appropriate standards of professional conduct and to dispose of individual cases of lawyer discipline and disability in a manner that does not discriminate by race, creed, color, sex, or national origin. To carry out this responsibility, the Court promulgates [these] . . . rules for lawyer discipline and disability proceedings.”).

Section 81.024 of the State Bar Act authorizes the Court to “adopt rules . . . for the operation, maintenance, and conduct of the state bar and the discipline of its members,” Tex. Gov't Code § 81.024(b), but it also provides that rules adopted “under this section” must be first approved in a referendum of State Bar members, *id.* § 81.024(c)–(g). Over the years, the Court and the State Bar have conducted referenda whenever proposed adoptions or amendments would make substantive amendments to the TDRPC or to the TRDP.³ The most recent rule referendum occurred between February 2, 2021 and March 4, 2021, and it resulted in amendments to the TDRPC and the TRDP.⁴ Subsequent to that referendum, on August 27, 2021, the Court (without a referendum) added a comment to Part VII of the TRDP and amended BODA's internal operating procedures to expressly authorize BODA to conduct business or proceedings remotely and to consider as evidence sworn testimony and sworn statements provided remotely.⁵

B. The Court Has Delegated its Power to Regulate the Practice of Law to the State Bar

The current TRDP took effect on August 27, 2021. As noted above, the complete TRDP is contained in Appendix B. The TRDP preamble references the Court's delegation of its power to maintain standards for professional conduct to the State Bar, which is a statutorily designated administrative agency of the Court. The preamble provides as follows:

Subject to the inherent power of the Supreme Court of Texas, *the responsibility for administering and supervising lawyer discipline and disability is delegated to the Board of Directors of the State Bar of Texas. Authority to adopt rules of procedure and administration not inconsistent with these rules is vested in the Board.* This delegation is specifically limited to the rights, powers, and authority herein expressly delegated.

TRDP Preamble (emphasis added). The Court, however, maintains and “exercises administrative control over the [S]tate [B]ar under the State Bar Act.” Tex. Gov't Code § 81.011(c). The State Bar's Board of Directors (“State Bar Board”) is vested with authority to adopt rules of procedure and administration consistent with the TRDP. *Id.* Further, the Board has the power to create committees to carry out the purposes of the State Bar Act, and they may (and do) appoint nonattorneys to these committees. *See* Tex. Gov't Code § 81.026 (a)–(b). In that regard, the State Bar President appoints attorney members to the Commission, which is “a permanent committee of the State Bar . . .” TRDP 1.06(D).

1. The Commission for Lawyer Discipline is a Permanent Committee of the State Bar

Each attorney admitted to practice in Texas (and each attorney specially admitted by a court of the State for a particular proceeding) is subject to the disciplinary and disability jurisdiction of the Court and the Commission. Tex. Gov't Code § 81.071. The Commission is comprised of twelve people—six attorneys and six nonattorneys (or public

³ Chief Justice Nathan L. Hecht, Martha G. Newton & Kennon L. Wooten, *How Texas Court Rules are Made* (May 13, 2016), <https://www.txcourts.gov/rules-forms/rules-standards/> (providing a broad overview of rulemaking in Texas).

⁴ These amendments are in Misc. Docket No. 21-9061, at <https://www.txcourts.gov/media/1452266/219061.pdf>.

⁵ These amendments are in Misc. Docket No. 21-9106, at <https://www.txcourts.gov/media/1452736/219106.pdf>.

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