

# **THE GRIEVANCE PROCESS & COMMON VIOLATIONS**

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The ultimate setback for a lawyer is the suspension of their law license, or even worse, disbarment. After countless hours of hard work to become a licensed attorney and to develop a law practice, maintaining your license should be a top priority and taken seriously. Effective June 1, 2018, the Texas Supreme Court adopted numerous amendments to the Texas Rules of Disciplinary Procedure. This paper is intended to provide readers with 1) general information regarding the amendments as they pertain to the grievance process, 2) the proper way to respond to a grievance identifying attorney misconduct, and 3) common problems to avoid in your practice.

## **A. Texas Rules of Disciplinary Procedure: The Grievance Process**

### *1. What is a Grievance?*

A grievance is a “written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of the Chief Disciplinary Counsel.”<sup>1</sup> If a client, or any person, believes he/she has witnessed attorney misconduct, the individual has the right to file a grievance. Many lawyers are under the

<sup>1</sup> TEX. R. DISCIPLINARY P. 1.06(R)

<sup>2</sup> See TEX. R. DISCIPLINARY P. 2.10. The option for Discretionary Review is one of the adopted amendments. See definition at TEX. R. DISCIPLINARY P. 1.06(M).

misunderstanding that only a client may file a grievance.

Once the grievance is received by the Chief Disciplinary Counsel (CDC), the CDC has thirty (30) days to examine the grievance and determine whether the grievance constitutes an “Inquiry, a Complaint or a Discretionary Referral.”<sup>2</sup>

### *2. An Inquiry*

If the grievance, regardless of its veracity, fails to allege professional misconduct, the CDC will classify the grievance as an “inquiry,” and the grievance will be dismissed.<sup>3</sup> Under the new rules, the Complainant may appeal this decision within thirty (30) days from notification of the dismissal. If the classification is affirmed, the Complainant may amend his/her grievance within twenty (20) days and provide new or additional evidence. The Complainant may only appeal the determination of the Amended Complaint one time.<sup>4</sup>

Some of the reasons the CDC may dismiss a grievance as an inquiry,<sup>5</sup> include the following:

- The grievance concerns the outcome of a case, not a violation of an ethics rule;
- The grievance does not involve a lawyer’s conduct acting in his or her professional capacity;
- The grievance is untimely—four (4) years, duplicative, or identical to a previous filing; or
- The grievance is filed against a sitting judge (which is exclusively handled by

<sup>3</sup> See TEX. R. DISCIPLINARY P. 1.06(T).

<sup>4</sup> See TEX. R. DISCIPLINARY P. 2.10(A).

<sup>5</sup> See <https://www.texasbar.com>; State Bar of Texas, Disciplinary Process Overview/Grievance Procedure/Why Are Grievances Dismissed?

the State Commission on Judicial Conduct).<sup>6</sup>

### 3. *A Complaint*

If the grievance, on its face, alleges professional misconduct, the CDC will classify the grievance as a “Complaint.”<sup>7</sup> Once the grievance is classified as a Complaint, the grievance is sent to the Respondent lawyer for review. The Respondent lawyer then has thirty (30) days to deliver a written Response to the CDC and the Complainant.<sup>8</sup>

### 4. *Discretionary Referral*<sup>9</sup>

This newly adopted classification allows the CDC, during the initial screening process, to refer minor grievances to the State Bar’s Client-Attorney Assistance Program (CAAP) for possible early resolution. CAAP is a voluntary and confidential<sup>10</sup> dispute resolution option. The CDC notifies the Complainant and Respondent of the referral to CAAP. CAAP then has sixty (60) days to notify the CDC of the outcome. Within fifteen (15) days of notification from CAAP, the CDC must decide if the grievance should be dismissed as an Inquiry or proceed as a Complaint.

**COMMON PROBLEM:** If a letter from the State Bar of Texas arrives at your home or office, **open the letter**. Many times, the fear of the letter immobilizes the lawyer. The letter is then stuck in a drawer or thrown away, with the hope it will go away. News flash—it will not go away and your chances of a favorable outcome diminish the longer you wait to address the allegations. If you find yourself in this situation, have a close

friend or law partner open the letter for you . . . just get the process started!

**PRACTICE TIP:** Once the letter is opened, contact your malpractice carrier to determine if you have grievance defense coverage. Many times, lawyers fail to even ask the question and either personally pay for the defense or attempt to handle the defense *pro se*.

### 5. *Responding to a Complaint: The Goal of the Response*

The goal of the Response is to provide the CDC with useful information to determine that no Just Cause exists to proceed on the Complaint.<sup>11</sup> The Response should be a factual account of the issues supported by evidence. Many times, the Respondent lawyer is angry and upset at the Complainant, and understandably so. In my experience, having another lawyer prepare the Response can best avoid this natural reaction to a grievance.

**COMMON PROBLEM:** Remember, the Response is not the opportunity to outline why the Complainant is crazy, a terrible client, caused the problems in the first place, or any other attacks. The only goal, at this point, is to convince the CDC to dismiss the grievance without the need for an administrative or judicial determination.

### 6. *A Proper Response*

With a well thought-out, proper Response, there is a good chance the CDC will either dismiss the Complaint or enter an agreed resolution of the Complaint after reading the Response. The State Bar wants

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<sup>6</sup> See <https://scjc.texas.gov>

<sup>7</sup> See TEX. R. DISCIPLINARY P. 1.06(G).

<sup>8</sup> See TEX. R. DISCIPLINARY P. 2.10(B).

<sup>9</sup> See TEX. R. DISCIPLINARY P. 2.10(C).

<sup>10</sup> Confidential information may be shared between CAAP and the CDC, *see id.*

<sup>11</sup> See TEX. R. DISCIPLINARY P. 2.12.

lawyers to succeed; the Bar is seeking not disbarments. The recommendations listed below will increase your success at early dismissal:

- **Timely File the Response:** The Respondent lawyer has thirty (30) days to file his/her Response.<sup>12</sup> Extensions are typically limited.
- **Humanize the Respondent Lawyer:** The State Bar investigators and staff attorneys have only read the allegations and do not know the “person” behind the Complaint. Humanize the Respondent lawyer. Spend one or two paragraphs discussing the lawyer’s law practice, speaking engagements, board certifications, and community service.
- **Identify the Ethical Rules Allegedly Violated:** In the beginning of the Response, it is helpful to outline the precise ethical rules or alleged violations the Complainant is asserting. This will keep the reader’s eye on those particular rules and also help the writer focus on outlining the facts that defend and support his/her position. All facts about a case may not be relevant or necessary in defending specific alleged ethical violations.
- **Clearly State the Background Facts:** The reader does not know anything about your case. The Response should clearly and concisely tell the reader what happened from the beginning through the filing of the Complaint. A timeline of events is very useful.

This section is typically the bulk of the Response. If the allegation is failure to communicate with the client, dedicate an

entire section to meticulously describing all communication between the lawyer—or his/her staff—and the Complainant. To the best of your ability, support each communication with either a call log, email, text message, time slip, or affidavit.

- **Use Exhibits to Support Position:** Recreating your steps throughout an entire file can be time consuming and challenging, but it is invaluable and presents a clear picture to the State Bar. The following are examples of exhibits that can be attached to the Response in support of the Respondent lawyer’s position:
  - Curriculum vitae
  - Pleadings
  - Motions and Orders
  - Engagement letters
  - Detailed billings
  - Text messages
  - Copies of settlement checks
  - Bank statements (both operating and IOLTA)
  - Affidavits
  - Communication logs
  - Emails
  - ADR position statements
  - Cell phone records
  - Calendar entries
  - Court/deposition transcripts
  - Photos
  - Recordings
  - Client file

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<sup>12</sup> See TEX. R. DISCIPLINARY P. 2.10(B).

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