

STATE BAR *of* TEXAS  
**COMMISSION FOR LAWYER DISCIPLINE**  
**— ANNUAL REPORT —**

June 1, 2015 – May 31, 2016



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# *The New Lawyer's Oath*

“I do solemnly swear that I will support  
the Constitutions of the United States,  
and of this State; that I will honestly demean myself  
in the practice of law; that I will discharge my duties  
to my clients to the best of my ability;  
and, that I will conduct myself with integrity  
and civility in dealing and communicating  
with the court and all parties.  
So help me God.”

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# FROM THE CHAIR OF THE COMMISSION FOR LAWYER DISCIPLINE

August 31, 2016

On behalf of the Commission for Lawyer Discipline, the information contained in this report is submitted on the attorney disciplinary system for the State of Texas for the period of June 1, 2015, through May 31, 2016. Some of the highlights from the past year are:



- The Commission successfully resolved 560 complaints through the imposition of 328 sanctions and collected \$301,187 in attorneys' fees;
- The Commission continued its efforts to combat professional misconduct in the area of immigration by resolving 101 complaints in litigation through the imposition of 19 sanctions, 13 of which were disbarments, resignations or suspensions;
- The Commission successfully defended two appeals involving prosecutorial misconduct, resulting in favorable opinions from the Board of Disciplinary Appeals; one of which was the appeal by a former prosecutor who was disbarred for withholding exculpatory evidence in the murder trial of a wrongfully imprisoned man;
- CDC assisted the Client Security Fund Subcommittee in reviewing 171 applications and approving more than \$800,000 in grants;
- CDC created video tutorials on *How to File a Grievance*, *The Grievance Referral Program*, and *Discipline and Lawyers' Assistance in Texas—Working Together to Help Attorneys in Need*, which are posted on the bar's website.
- The Office of Chief Disciplinary Counsel, as a division of the State Bar of Texas, participated in an ongoing review by the Legislature's Sunset Commission, in which CDC endeavored to answer queries and provide statistics and other information on the disciplinary process and improvements to ensure a fair and just outcome for both the public and attorneys.

As always, the volunteer members of the Commission for Lawyer Discipline worked untold hours, meeting each month to review, discuss, and debate disciplinary matters. Their diligence allows the disciplinary system to work.

A handwritten signature in black ink that reads "John G. Neal". The signature is written in a cursive style with a large, looping initial "J".

John Neal  
Chair of the Commission for Lawyer Discipline

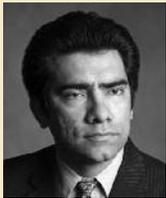
## COMMISSION FOR LAWYER DISCIPLINE

The Commission for Lawyer Discipline 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 Office of Chief Disciplinary Counsel, which 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. Professional responsibility and public protection are priorities of the State Bar of Texas, and oversight, funding, and support of the disciplinary system is in the best interest of all Texas attorneys as they provide ethical representation to their clients. 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.

### ATTORNEY MEMBERS



**John Neal**, chair of the Commission, is a graduate of Georgia State University and Cumberland School of Law at Samford University. He began his legal career in the firm of Neal, Neal, Richie and Hill, which emphasized litigation in state and federal court. He served as district attorney of the 90th Judicial District from 1986 to 1996. He was named chief of the criminal prosecutions division in 1996 and served under Attorneys General Dan Morales, John Cornyn, and Greg Abbott. Neal served as chief disciplinary counsel for the State Bar of Texas from 2005 to 2009 and currently is the first assistant district attorney for the Travis County District Attorney's Office. He is board certified in criminal law.



**Pablo Javier Almaguer**, vice chair of the Commission, is the private attorney involvement group coordinator for Texas RioGrande Legal Aid Inc. He earned his B.A. in political science from the University of Texas-Pan American in 1994 and his law degree from Chicago-Kent College of Law in 1997. His current position includes the organization-wide responsibility of bridging the communication gap between pro bono volunteers and TRLA's opportunities. He served as president of the Hidalgo County Bar Association/Hidalgo County Bar Foundation from 2007 to 2008. Almaguer serves as president of the board of directors of the Texas Civil Rights Project and the University of Texas-Pan American Alumni Association Board of Trustees. He was the first legal services attorney to serve on the board of directors of the State Bar of Texas, from 2008 to 2012, and was the first legal services attorney to serve as chair, from 2010 to 2011.



**Theresa Chang** is the presiding judge of Harris County Civil Court at Law No. 2. Judge Chang earned her M.S. in chemical engineering from Texas A&M University System and was a registered professional engineer before earning her law degree from the South Texas College of Law. She worked as an assistant county attorney for 10 years and as division chief of the Revenue and Compliance divisions of the Harris County Attorney's Office. In 2007, Judge Chang unanimously was appointed district clerk of Harris County by 59 district court judges. She became an associate judge of the Houston Municipal Courts before being appointed and elected as a county civil court judge. Judge Chang has served on the board of directors of the State Bar, the Asian American Bar Association in Houston, and many other community organizations. Judge Chang was appointed to the Commission in 2011.



**Bruce Ashworth** is a solo practitioner in Arlington, where his practice focuses on criminal and personal injury law. He is certified in criminal law by the Texas Board of Legal Specialization. Ashworth previously served as a local grievance committee member and as president of the Tarrant County Bar Association and the Arlington Bar Association. He earned his law degree from Texas Southern University Thurgood Marshall School of Law in 1982.

**Noelle M. Reed** heads the Houston litigation practice for Skadden, Arps, Slate, Meagher & Flom. She has extensive experience representing clients in complex litigation in state and federal trial and appellate courts and arbitrations. She obtained her B.A. from Boston University in 1991 and her law degree from Harvard Law School in 1996.



**Gena Bunn** is an attorney at Holmes & Moore in Longview, where she practices criminal defense with a particular emphasis on criminal appeals. She previously served as chief of the Capital Litigation Division and the Postconviction Litigation Division at the Attorney General's Office in Austin, representing the state in federal court appeals of state court convictions. Bunn argued numerous federal habeas corpus cases in the United States Supreme Court and the 5th U.S. Circuit Court of Appeals in New Orleans. She graduated from the University of Texas with a Bachelor of Journalism and received her law degree from Baylor Law School.



## **PUBLIC MEMBERS**

**Jane A. King** has 40 years of experience in juvenile justice and is the chief juvenile probation officer for Randall County. She is a licensed clinical social worker. King also serves on the board of the Texas Juvenile Justice Department. She was appointed to the Commission in 2011.



**Teresa Acosta** of El Paso was appointed to the Commission in 2012. She retired from the U.S. Courts, Western District of Texas, as assistant deputy chief U.S. probation officer. She previously was employed by the U.S. House of Representatives in the office of the congressman for the 16th Congressional District of Texas. Currently, she is employed as adjunct faculty at El Paso Community College, where she teaches American government and politics. Acosta earned an M.P.A. and a B.A. in journalism from the University of Texas at El Paso. From 2008 to 2012, she served on the District 17 Grievance Committee.



**Dave Obergfell** was appointed to the Commission in 2014. He retired from banking in 1995 after a 25-year career in the corporate trust department of several banks. He began a consulting career in 1995, advising parties in various bankruptcy situations, and retired from consulting in December 2014.



**William Skrobarczyk** is a partner in the CPA firm of Skrobarczyk & Partridge. Prior to his appointment to the Commission in 2014, he served on the District 11 Grievance Committee from 2008 to 2014. He earned an M.B.A. and a B.A. from Texas A&M University-Corpus Christi.



**Vance Goss** works in the commercial real estate business in the Bryan-College Station area with Clark Isenhour Real Estate Services LLC. Previously, he owned and operated Brazos Record Storage, a commercial records management and destruction business. Prior to his appointment to the Commission in 2015, Goss served on the District 8 Grievance Committee.



**Javier S. Vera** is a CPA, a U.S. licensed custom broker, and CFO of Roser & Cowen Logistical Customs Services Ltd. in Brownsville. He began his career working for Grant Thornton International, an international public accounting firm, and was a senior audit manager. Vera serves as an alderman for the town of Rancho Viejo. He has also served on various boards, nonprofits, and civic organizations. Prior to his appointment to the Commission in 2015, Vera served on the District 12 Grievance Committee from 2010 to 2015. Vera graduated from the University of Texas at Austin with a B.B.A. in accounting in 1982.



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***Ethics Helpline — (800) 532-3947***

*The Ethics Helpline received more than 6,200 contacts from Texas lawyers seeking advice regarding conflicts, confidentiality, safekeeping property, termination of representation, candor to the tribunal and fairness in adjudicatory proceedings, communicating with represented persons, fee-splitting or engaging in business with non-lawyers, advertising and solicitation, and the duty to report misconduct.*

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# 2015-2016 HIGHLIGHTS

## SUNSET REVIEW

The Office of Chief Disciplinary Counsel, as part of the State Bar of Texas, has been undergoing a review with the Texas Legislature’s Sunset Advisory Commission, which periodically evaluates the performance of an agency and recommends improvements. As part of this Sunset review, CDC contributed to the bar’s self-evaluation report, met numerous times with members of the Sunset staff, answered questions and provided statistical information, and testified at a public hearing before the Sunset Commission.

## IMMIGRATION EFFORTS CONTINUE

Undocumented and non-English-speaking immigrants are often susceptible to predatory practices of unethical attorneys. Because of the large number of immigrants in Texas, CDC has taken an active role in combatting professional misconduct in this area.

During the 2015-2016 bar year, CDC successfully resolved 101 complaints in litigation through the imposition of 19 sanctions—13 of which were disbarments, resignations in lieu of discipline, or suspensions. The sanctioned attorneys committed violations such as taking client money without performing any work, stealing immigration bond funds, and engaging in barratry. In the 2014-2015 bar year, CDC obtained 18 sanctions involving immigration matters, resolving 69 grievances.

In addition to prosecuting professional misconduct, CDC worked closely with the U.S. Citizenship and Immigration Services, local law enforcement, and the media to inform the public about how to avoid hiring unethical lawyers and what steps to take if a client believes a lawyer is committing professional misconduct.



*Members of the Commission for Lawyer Discipline.*

## PROSECUTORIAL MISCONDUCT STILL A SIGNIFICANT ISSUE

Texas continues to take a leading role in its efforts to discipline prosecutors for professional misconduct.

### Texas's Leadership Role

CDC Deputy Counsel for Administration Laura Popps spoke at a conference in April 2016 at the Benjamin N.



CDC Deputy Counsel for Administration Laura Popps advises other jurisdictions on how to combat professional misconduct by prosecutors.

Cardozo School of Law in New York. The conference, “New Models in Prosecutorial Accountability,” was co-hosted by Cardozo and the Innocence Project and focused on exploring how to address prosecutorial misconduct, with an emphasis on positive developments.

Popps spoke about the role of bar discipline and discussed some of CDC’s most high-profile prosecutorial misconduct cases. Other topics included the role of the judiciary, the academic perspective, and internal mechanisms within prosecutorial offices.

### Successful Appellate Litigation

CDC’s appellate lawyers successfully defended two appeals involving prosecutorial misconduct before the Board of Disciplinary Appeals. One involved the appeal by a former prosecutor who was disbarred for withholding exculpatory evidence in a death penalty case in which the defendant was wrongfully convicted of murder. In that appeal, BODA held that summary dismissals of grievances, prior to the commencement of any evidentiary proceeding, have no *res judicata* effect.

In the second appeal, the prosecutor appealed a six-month fully probated suspension after he was determined to have withheld evidence that the victim in an assault case was unable to see her attacker. The evidence did not come out until a sentencing hearing, at which point the court declared a mistrial. In its opinion affirming the suspension, BODA held that a prosecutor has a duty to disclose any information that tends to negate the guilt of the accused, without regard to whether the information is material.



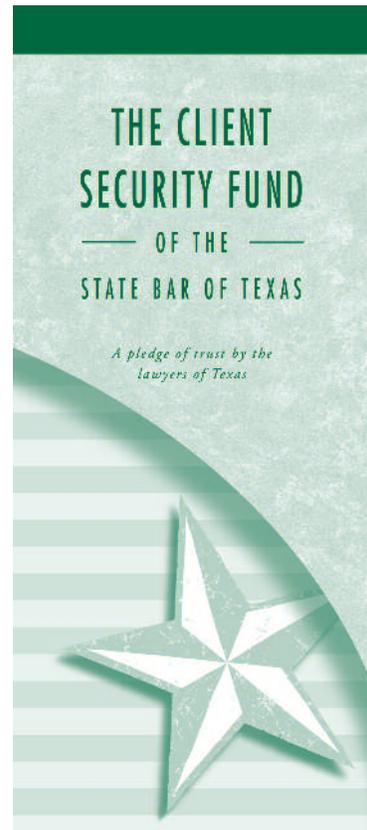
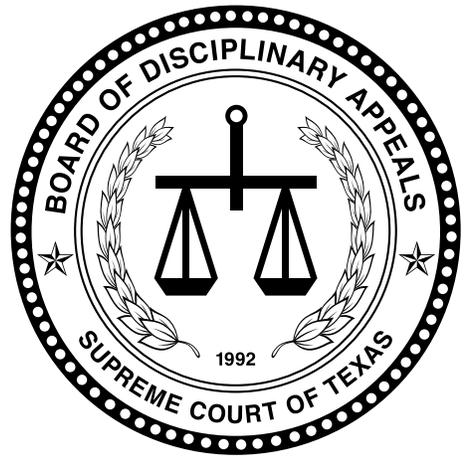
Senior Appellate Counsel Cynthia Hamilton argues before BODA.

## INCREASED AWARENESS OF THE CLIENT SECURITY FUND

The Client Security Fund is designed to protect the integrity of the legal profession through discretionary grants to clients who have been harmed by their lawyers' dishonest conduct. Since its inception, the Client Security Fund has seen a steady annual increase in the number of applications submitted by people seeking a grant. This is due to a combination of factors, including an increase in deceased attorneys with overdrawn trust accounts, the actions of several prolifically unethical immigration attorneys, and an increased awareness of the fund. CDC notifies eligible complaints of the existence of the fund, but news accounts such as a series of *Telemundo Houston* stories on one particular immigration attorney who stole money from many clients prior to resigning in lieu of discipline also helped raise the fund's profile.

Serving as custodian of the practice of a missing, incapacitated, deceased, or disabled lawyer is a commitment. However, it is often a fulfilling experience, as the custodian has the satisfaction of rendering an invaluable service to the public and other members of the bar.

*“Thank you so much for taking the time to visit with me and for sharing the information.”*



## VIDEO TUTORIALS

CDC, in conjunction with the State Bar’s video production staff, produced three video tutorials. In the first, titled *How to File a Grievance*, CDC’s Public Affairs Counsel instructs the viewer on the step-by-step process in filing a grievance and the ensuing disciplinary process. This was designed in an effort to make the disciplinary process less intimidating for complainants.

The second video, *The Grievance Referral Program*, provides an overview of the Grievance Referral Program, ensuring that attorneys entering the program have a greater understanding of how the process works, increasing their chances of successful completion.

The third video, *Discipline and Lawyers’ Assistance in Texas—Working Together to Help Attorneys in Need*, explains the many ways in which the Texas Lawyers’ Assistance Program can assist Texas lawyers with mental health and substance abuse issues.

All three videos can be found on the bar’s website.



## A NOTE FROM A PUBLIC MEMBER OF THE COMMISSION

My introduction to the Texas attorney discipline process came by way of an appointment to serve on the District 17-2 Grievance Committee. This district is the westernmost part of Texas and includes my hometown of El Paso. I learned that the panel of the committee I would be serving on consisted of six members. Two-thirds of the committee would be lawyers and one-third would be public members. I was a public member. Somehow the math bothered me. One-third public members plus two-thirds lawyers equaled a lot of legalese. Not only that, I worried about how much consideration the lawyer members would give to any input from the two public members. I never questioned the expertise of the lawyer members because they represented the best in our community and the state. But the nagging question persisted: Would they give serious thought to commentaries and recommendations from my fellow public member and me?

My concerns were quickly dispelled. As it turned out, the math was not an issue. It was perfect. Whether the formula called for two public and four lawyers, or six of each, as is the case with the Commission, where I now have the honor and privilege to serve, respect and consideration for all members' opinions is always observed. We all share a common goal: to protect the public by making certain that the Texas legal system works for everyone, which starts with proper representation by a lawyer. This is an enormous responsibility that isn't taken lightly by any member of the Commission, whether public or lawyer. Without the benefit of each and every members' opinion, we could not achieve our important mission.



Teresa Acosta.

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*“Your approach to my situation and the handling of it has been excellent. I found our phone conversations helpful. Your suggestions on handling clients will be followed from here forward.”*

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Commission members Jane King, Dave Obergfell, Javier Vera, and Noelle Reed.

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## ***Recognizing Volunteers***

*Currently 357 Texans serve on local  
grievance committees.*

*Two-thirds are lawyers.*

*One-third are public members.*

*Collectively, they volunteer thousands of hours  
each year to protect the public.*

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# OFFICE OF CHIEF DISCIPLINARY COUNSEL

The Texas attorney discipline system is administered by the Office of Chief Disciplinary Counsel, which is designed to be the “bar’s law office,” and whose work is overseen by the Commission for Lawyer Discipline. CDC represents the Commission in disciplinary litigation. Professionalism and results are directly tied to the public’s perception of the ability of the State Bar of Texas to discipline its own lawyers and protect the public from unethical practitioners. In recognition of this close connection, emphasis is placed on the quality of disciplinary prosecutions, identification of disability or impairment problems, solutions for attorneys in need of law practice management or other basic skills, and innovative ways to maintain open communication between the public and the bar.

## STAFFING AND TRAINING

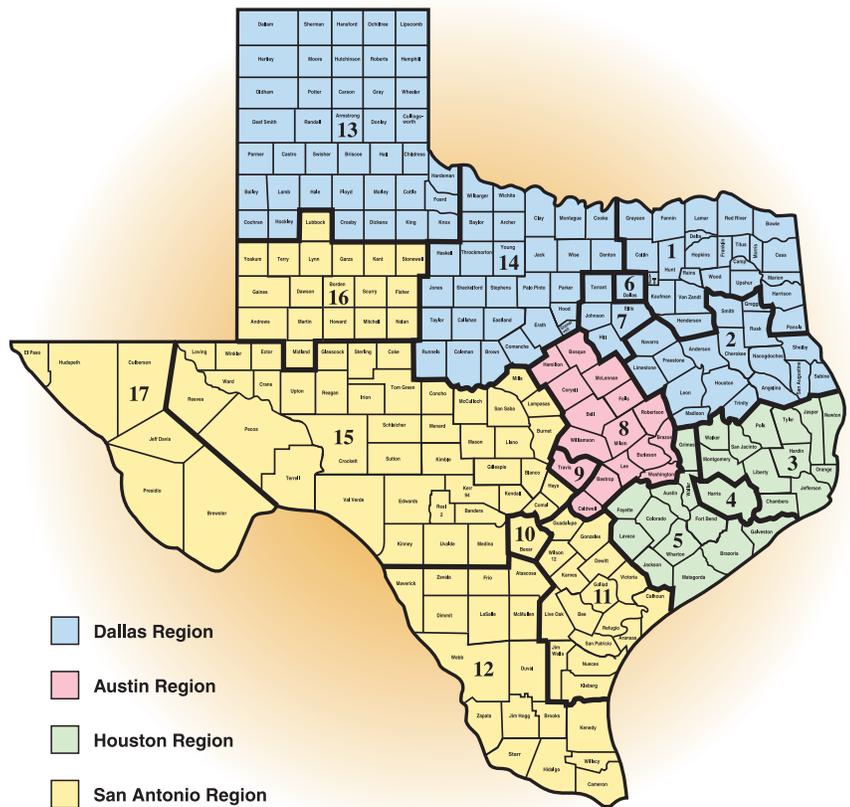
The Office of Chief Disciplinary Counsel operates the discipline system with 91 full-time employees, including 35 lawyers, 10 investigators, 32 legal support staff members, 10 administrative support staff members, and four administrative managers.

In addition to its headquarters in Austin, 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. CDC provides two comprehensive in-house orientation programs for all newly hired employees statewide—one for lawyers and one for non-lawyer staff. The orientation is held on the employee’s first day of work and provides an overview of the core functions of the organization as a whole, as well as a detailed review of the work of CDC.

This past bar year, CDC held an attorney workshop in San Antonio on February 24-26, 2016. The seminar covered topics such as commonly misunderstood immigration laws, an update on the laws affecting writs of habeas corpus, prosecution of non-lawyer immigration practitioners, professional misconduct in family law, and a primer on letters of protection.

In the 2015-2016 bar year, CDC obtained 328 sanctions. Each sanction entered may have involved complaints filed by more than one complainant. In this past bar year, 560 complaints were successfully resolved through the 328 sanctions that CDC obtained. More than 50 percent of the sanctions entered consisted of disbarments, resignations in lieu of discipline, or suspensions.

Forty-seven of these cases were resolved through the Grievance Referral Program, CDC’s diversion program. CDC also pursued 10 compulsory discipline cases (those involving lawyers convicted of various offenses) before the Board of Disciplinary Appeals. Of those 10, two were disbarments, three were resignations in lieu of discipline, and five were interlocutory orders of suspension. CDC obtained judgments ordering reciprocal discipline, cases based on lawyers disciplined in other jurisdictions, in all six matters it presented to BODA, including two disbarments, one resignation in lieu of discipline, two active suspensions, and one fully probated suspension.



## ATTORNEY ETHICS HELPLINE

CDC maintains, as a service to the members of the bar, a toll-free Attorney Ethics Helpline, operated from 8 a.m. to 5 p.m. Monday through Friday.

The helpline is designed to assist Texas attorneys who have questions about their ethical obligations to clients, courts, and the public under the Texas Disciplinary Rules of Professional Conduct. The information disseminated is designed to give attorneys access to rules, ethics opinions, and caselaw so that an attorney can make an informed decision about an ethics issue. Pursuant to the policy of the State Bar Board of Directors, the chief disciplinary counsel and her staff are not permitted to issue written opinions or advice.

The Attorney Ethics Helpline does not provide legal assistance to the general public and cannot address questions concerning pending grievances.

During the 2015-2016 bar year, the helpline handled more than 6,200 ethics contacts. Common areas of inquiry include conflicts, confidentiality, safekeeping property, termination of representation, candor to the tribunal and fairness in adjudicatory proceedings, communicating with a represented person, fee-splitting or engaging in business with non-lawyers, advertising and solicitation, and the duty to report misconduct.

**THE ATTORNEY ETHICS HELPLINE NUMBER IS (800) 532-3947.**

## MEDIA INQUIRIES

CDC continues to receive consistent press coverage, due in part to its efforts to inform the public about the disciplinary process via the media and the interest generated by Texas having taken a national leadership role in the issues of prosecutorial misconduct, barratry, and professional misconduct in immigration practice.

Claire Mock acts as the media contact for CDC and fielded nearly 200 press inquiries during the 2015-2016 bar year. Mock, along with the Client-Attorney Assistance Program, worked with *Telemundo Houston* in its series of stories on a now disbarred immigration attorney who preyed on immigrants by taking their money and performing no work on their matters.

## STATEWIDE COMPLIANCE MONITOR

Disciplinary judgments often require that respondents refund all or part of the attorneys' fees paid to them by clients harmed by misconduct and pay the Commission for the attorneys' fees and costs incurred in prosecuting the disciplinary action. Terms of license suspension may also contain requirements directed toward changing lawyer behavior, for example, completing additional continuing legal education in the area of law practice management, assigning of a law practice monitor, auditing of the lawyer's trust account, or participating in treatment programs for mental health or substance use disorders. This results in frequent referrals to other bar programs such as TexasBarCLE and the Texas Lawyers' Assistance Program.

The statewide compliance monitor, Nancy Ashcraft, is housed in the Austin office, which enables her to manage the

**MEDIA INQUIRIES REGARDING  
THE DISCIPLINARY SYSTEM  
SHOULD BE DIRECTED TO:**

**Claire Mock  
Public Affairs Counsel  
Office of Chief Disciplinary Counsel  
(512) 427-1354  
cmock@texasbar.com**

compliance caseload in a centralized and more consistent manner. She is assisted by Lisa Villarreal-Rios, the Grievance Referral Program administrator, in cases involving rehabilitative terms of suspension. At the close of the 2015-2016 bar year, Ashcraft had 300 active cases and had resolved 184 cases. As a matter of office policy, immediate payment of restitution is required in most cases involving agreed disciplinary judgments. An additional \$140,183 in restitution was collected in the 2015-2016 bar year in cases involving agreed judgments, non-agreed judgments, respondent defaults, and reinstatements. The centralized compliance process contributed to \$301,187 in attorneys' fees collections for 2015-2016.

**CLIENT SECURITY FUND**

Every state in the U.S. and province in Canada has some form of client protection fund. Texas's fund is called the Client Security Fund and holds more than \$3 million in its corpus. Payouts are funded through an annual appropriation from the bar, interest on the corpus, and any restitution received.

Unless the lawyer is already disbarred, resigned in lieu of discipline, or deceased, eligible applicants must file a grievance that results in findings that the lawyer stole the client's money or failed to refund an unearned fee. Applicants must present proof of their losses and meet the statute of limitations for the fund, which is 18 months following the date of the disciplinary judgment.

Applications to the fund are reviewed and acted upon by the Client Security Fund Subcommittee, a standing subcommittee of the State Bar Board of Directors. CDC, through Claire Mock, serves as the administrator and legal counsel to the fund.

Mock is responsible for conducting investigations on applications and presenting recommendations to the subcommittee. In the 2015-2016 bar year, Mock presented 171 applications to the subcommittee. Of the 171 reviewed, 115 were approved, resulting in the approval of grants totaling \$814,616.72.

<b>Time Period</b>	<b>Applications Presented</b>	<b>Applications Approved</b>	<b>Total Grants Approved</b>
2015-2016	171	115	\$814,616.72
2014-2015	138	102	\$639,581.09
2013-2014	134	118	\$1,232,355.00

Each year, the fund administrator attends the American Bar Association's Client Protection Forum, where fund administrators from across the nation meet to discuss current issues facing client protection funds. The forum is heavily attended by members of the National Client Protection Organization, which is a nonprofit that acts as an educational resource for the exchange of information among law client protection funds throughout the United States and Canada. The NCPO's purpose is to provide help and support to protection funds and to provide programs to protect legal consumers from dishonest conduct in the practice of law.



The State Bar of Texas, which has one of the largest client protection funds in the nation, joined the NCPO after the most recent forum in Philadelphia. This connection will provide the administrator and the subcommittee members with additional resources in tackling difficult issues related to the administration of a client protection fund.

## **DISTRICT GRIEVANCE COMMITTEES**

Texas is proud of its tradition of utilizing local volunteers to serve on grievance committees. The commitment of the district grievance committee members is vital to the success and effectiveness of the attorney discipline system. Currently, 357 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.

### **ROLE OF GRIEVANCE COMMITTEES**

The district grievance committees perform two critical roles in the discipline system: (1) review complaints presented by CDC 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.

### **LOCAL TRAINING**

Local training of each district grievance committee is conducted annually throughout the state. This MCLE-approved training is conducted by regional counsel and their staff. Emphasis is placed upon the procedural and substantive rules governing the attorney discipline system, duties and authority of the grievance committees, and the importance of attendance and participation at scheduled hearings. In addition to these efforts, CDC has developed and produced several online training sessions addressing evidentiary hearings, common rule violations, issues related to the imposition of sanctions, attorneys' fees, and a grievance symposium that addressed a variety of issues related to the discipline process. The sessions were designed to provide grievance committee members with a more in-depth analysis of key issues in disciplinary cases in order to facilitate their work on the grievance committees. Additionally, the State Bar offers free continuing legal education courses for members of the grievance committees.

The Dallas Regional Office conducted five annual training sessions; the San Antonio Regional Office conducted 11 annual training sessions; the Houston Regional Office conducted three annual training sessions; and the Austin Regional Office conducted two annual training sessions.



*Tim Bersch, trial attorney, CDC Houston; Lee Cox, panel chair, District 5 Panel 1; Andrew Tolchin, State Bar Director District 5; Melody Poole, panel chair, District 5 Panel 2; and Kyle Verret, panel chair, District 5 Panel 3.*



*CDC Deputy Counsel for Administration Laura Pops and Robert Howell, departing District 9 Grievance Committee member and panel chair.*



*Laura Pops and Jacqueline Watson, new District 9 Grievance Committee member.*



*Houston CDC Trial Attorneys Michael Pitts, Vanessa Windham, Shannon Saucedo, Clara Saafir, and Tim Bersch.*

## DIVERSITY OF GRIEVANCE COMMITTEE MEMBERS

Acknowledging the importance to the public and the lawyers of Texas for the members of the district grievance committees to fairly represent the racial, ethnic, and gender makeup of the districts they serve, the State Bar directors work with CDC to make appointments that maintain this diversity in membership, including the goal that lawyer members reflect various practice areas and law firm size. The most common areas of practice by committee membership are general practice, criminal law, family law, personal injury law, and probate law, which are also the most common types of law related to filed grievances.

### 2015-2016 DIVERSITY SURVEY OF GRIEVANCE COMMITTEE MEMBERSHIP COMPARED WITH STATE BAR MEMBERSHIP

Gender	Committee	Attorney Committee Membership	SBOT Membership
Male	63%	68%	65%
Female	37%	32%	35%

Ethnicity	Committee	Attorney Committee Membership	SBOT Membership
White/Caucasian	66%	62%	81%
Asian	1%	0%	3%
African-American	7%	5%	5%
Native American	1%	1%	<1%
Hispanic	10%	12%	9%
Other	19%	16%	2%

*“As far as ‘enjoying’ the program, I know that I enjoyed speaking with you. The subject matter (some of my failings) is not enjoyable to think or speak about, but it is necessary. What I enjoyed most (and hope to enjoy more later) is the distinct possibility that I can change enough about my professional habits to do a much better job as an attorney/counselor to my clients, and to have that change also exert a positive impact on my personal life ... Lisa, thank you very much for all of your help in this matter.”*

# OVERVIEW OF THE ATTORNEY DISCIPLINE PROCESS

The State Bar of Texas is dedicated to improving and advancing the quality of legal services to the public, protecting the public through the discipline system, and fostering integrity and ethical conduct in the legal profession.

The Texas attorney discipline system is governed by the Texas Disciplinary Rules of Professional Conduct (ethics rules) and the Texas Rules of Disciplinary Procedure (procedural rules). 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.

Changes to the disciplinary rules effective January 1, 2004, were largely a result of oversight by the Texas Legislature during Sunset review of the State Bar of Texas in 2003. Recommendations of the Sunset Commission led to revisions of the State Bar Act and adoption of the current rules by the Supreme Court of Texas.

These changes streamlined the grievance process by eliminating unnecessary hearings based on unfounded complaints and requiring deadlines for different stages of the process, thereby resulting in a faster resolution of disciplinary matters.

The Texas Rules of Disciplinary Procedure and Texas Disciplinary Rules of Professional Conduct are available at [texasbar.com/ethics](http://texasbar.com/ethics).

## PROTECTING THE PUBLIC 2015-2016 SNAPSHOT

<b>Total Disciplinary Sanctions</b>	<b>328</b>
<b>*Total Complaints Resolved</b>	<b>560</b>

<b>Disbarments</b>	<b>22</b>
<b>Resignations in Lieu of Discipline</b>	<b>27</b>
<b>Suspensions</b>	<b>135</b>
<b>Public Reprimands</b>	<b>30</b>
<b>Private Reprimands</b>	<b>67</b>
<b>Grievance Referral</b>	<b>47</b>

- \$301,187 in attorneys' fees collected from respondent attorneys as part of a sanction
- \$814,616.72 in funds approved for victims of attorney misconduct by the State Bar of Texas Client Security Fund
- More than 6,200 ethics contacts were handled by the State Bar of Texas Ethics Helpline
- 966 attorney-client relationships were assisted by dispute resolution services provided by the State Bar Client-Attorney Assistance Program
- More than 3,600 lawyer advertisements reviewed by the State Bar Advertising Review Committee

\* Each sanction entered may have involved complaints filed by more than one complainant.

# 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 Client-Attorney Assistance Program, and at courthouses, law libraries, legal aid organizations, and local bar associations across the state. In addition, complainants can now file grievances directly online via the State Bar website.

## CLASSIFICATION

The filing of a written grievance with any one of CDC’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, 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. During the 2015-2016 bar year, 7,760 grievances were filed.

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.

IF: The grievance **does not** allege professional misconduct.

THEN: It is dismissed as an inquiry.

IF: The grievance **does** allege professional misconduct.

THEN: It is classified as a complaint and sent to the lawyer who is alleged to have committed the professional conduct for a response.

## WHY ARE GRIEVANCES DISMISSED?

Of the grievances considered between June 1, 2015, and May 31, 2016, 5,054 were dismissed as inquiries. Grievances are dismissed for various reasons, including the following:

- The grievance concerns the outcome of a case but does not specify a violation of an ethics rule.
- The grievance does not involve a lawyer’s conduct in his or her professional capacity.
- The grievance is filed too late.
- The grievance is duplicative or identical to a previous filing.
- The grievance concerns a lawyer who has been disbarred, has resigned, or is deceased.
- The grievance concerns a person who is not licensed as an attorney (handled by the Unauthorized Practice of Law Committee).
- The grievance is filed against a sitting judge (handled by the State Commission on Judicial Conduct).

## CHECK IN THE SYSTEM — AN APPEALS PROCESS

The person who filed the grievance has the right to appeal CDC’s classification decision to dismiss the grievance as an inquiry to the Board of Disciplinary Appeals. BODA is an independent 12-attorney tribunal, appointed by the Supreme Court of Texas.

During the 2015-2016 bar year, there were 1,434 appeals by complainants from classification decisions. Of the 1,434 appeals, BODA reversed 151 classification decisions, resulting in an overall reversal rate of 10.5 percent. When BODA reverses a classification decision, the grievance is sent back to CDC and is processed as a complaint.

## — PROCESSING A GRIEVANCE —



\*Evidentiary judgments are appealed to BODA  
District court judgments are appealed to state appellate court

## **COMPLAINT STATISTICS**

During the 2015-2016 bar year, 2,383 of grievances filed were classified as complaints. A majority of these complaints involved the areas of criminal law, family law, and personal injury. Among the most common allegations were neglect, failure to communicate, and complaints about the termination or withdrawal of representation.

## **JUST CAUSE DETERMINATION**

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, CDC, through its investigation, must determine whether there is just cause to believe that professional misconduct occurred. This investigation may include the following:

- Requests for additional information from the complainant
- Information from corroborative witnesses
- Receipts
- Hourly records or billing statements
- Correspondence to and from client
- Message slips, telephone logs, or records of long distance telephone calls and emails
- Court records, such as pleadings, motions, orders, and docket sheets
- Copies of settlement checks and/or disbursement statements
- IOLTA or trust account records, such as monthly bank statements, deposit slips, deposit items, and disbursement items
- State Bar Membership Department records, including records of current or past administrative suspensions
- Client file
- Witness interviews and sworn statements

## **NO JUST CAUSE FINDING**

If CDC 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 CDC's determination.

Information and results regarding CDC's investigation are presented to the panel at a docket hearing without the presence of either the complainant or respondent. If the panel accepts CDC's determination, the complaint will be dismissed. If the panel rejects CDC's determination, the panel votes to proceed on the complaint.

During the 2015-2016 bar year, 1,554 cases were presented to Summary Disposition Panels of local grievance committees for consideration. The panels voted to dismiss in 1,520 of those cases.

## **TRIAL OF THE COMPLAINT**

If CDC finds just cause or the Summary Disposition Panel votes to proceed on the complaint, the respondent lawyer is given written notice of the allegations and rule violations. The respondent has 20 days to notify CDC whether he or she chooses to have the case heard before an evidentiary panel of the grievance committee or by a district court, with or without a jury. This choice is referred to as the respondent's election. A respondent who fails to elect will have the case tried before an evidentiary panel of the grievance committee.

2015-2016 BAR YEAR		2014-2015 BAR YEAR	
Elected Evidentiary	214	Elected Evidentiary	239
Defaulted into Evidentiary	257	Defaulted into Evidentiary	213
Elected District Court	44	Elected District Court	50

Evidentiary panel hearings are confidential and allow for a private reprimand, the least sanction available, to be imposed. District court proceedings are public and the least sanction available is a public reprimand. In both types of proceedings, the parties are the Commission for Lawyer Discipline represented by CDC and the respondent lawyer. It is the Commission’s burden to prove the allegations of professional misconduct by a preponderance of the evidence.

If no professional misconduct is found, the case is dismissed. If professional misconduct is found, a separate hearing may be held to determine the appropriate discipline. In evidentiary panel proceedings, the panel may also find that the respondent suffers from a disability and forwards its finding to the Board of Disciplinary Appeals.

During the 2015-2016 bar year, CDC resolved 515 complaints before grievance committee evidentiary panels, district courts, and the Board of Disciplinary Appeals and disposed of more than 1,500 cases before Summary Disposition Panels of the local grievance committees.

### GRIEVANCE REFERRAL PROGRAM

Implemented in 2007, the Grievance Referral Program is an important component of the attorney discipline system. It was designed to help identify and assist lawyers who have impairment or performance issues and who enter the disciplinary system as a result of minor misconduct. GRP allows the Commission for Lawyer Discipline to refer to the program lawyers who have engaged in minor misconduct and who otherwise meet the GRP eligibility criteria. In exchange for a dismissal of the underlying complaint by the Commission, the respondent lawyer agrees to complete a program individually tailored to the respondent lawyer’s needs. If the lawyer does not fully complete the terms of the agreement in a timely manner, the underlying complaint moves forward through the usual disciplinary process.

GRP presents an opportunity for respondent lawyers to address the issues that contributed to the misconduct, including issues of law practice management, substance abuse, and mental health. In this way, the public is better protected from future misconduct by the lawyer.

Lisa Villarreal-Rios has served as the GRP administrator since 2010. Villarreal-Rios is a licensed lawyer and a licensed social worker (LMSW).

*“In summary, I learned a great deal from these ethics courses, and they were a perfect reminder of what to do and not to do ... Many thanks for working with me and for your wise counsel throughout this process.”*

During the 2015-2016 bar year, in addition to monitoring law practice management and rehabilitative terms for respondents with judgments, Villarreal-Rios helped 47 attorneys successfully complete the GRP and worked with more than 100 respondents. Additionally, she produced two informational videos—one to educate respondents, attorneys, and the public about the GRP program and its procedures and the other to inform attorneys, volunteers, and the public about how the CDC works with the Texas Lawyers’ Assistance Program. Both videos are available on the State Bar of Texas website. She also spoke at the American Bar Association’s 2015 Lawyer Assistance Programs Conference in New Mexico at a panel session titled “Bringing It Together to Help the Distressed Attorney: Discipline, Clinical and Practice Management.”

# PUNISHMENT FOR PROFESSIONAL MISCONDUCT

The term “sanction” refers to the level of discipline imposed against a respondent attorney. In determining the appropriate sanction to be imposed, an evidentiary panel or district court considers the following:

- Nature and degree of the professional misconduct
- Seriousness of and circumstances surrounding the professional misconduct
- Loss or damage to clients
- Damage to the profession
- Assurance that those who seek legal services in the future will be insulated from the type of professional misconduct
- Profit to the attorney
- Avoidance of repetition
- Deterrent effect
- Maintenance of respect for the legal profession
- Conduct of the respondent during the course of the disciplinary proceeding
- Respondent’s disciplinary history

The different types of sanctions, or levels of discipline, include the following:

## PRIVATE REPRIMAND

A private reprimand is available only if the case is tried before an evidentiary panel of the grievance committee. This sanction is not available in a case heard before a district court. A private reprimand is the least level of discipline that can be given. It is not public and this information is not published in connection with the specific lawyer and is not released upon inquiries from the public. However, this sanction remains a part of the lawyer’s disciplinary history and may be considered in any subsequent disciplinary proceeding. The Texas Legislature and Commission for Lawyer Discipline have established limitations on the use of private reprimands. A private reprimand is not available if:

- A private reprimand has been imposed upon the respondent lawyer within the preceding five-year period for a violation of the same disciplinary rule; or
- The respondent lawyer has previously received two or more private reprimands, whether or not for violations of the same disciplinary rule, within the preceding 10 years; or
- The misconduct includes theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
- The misconduct has resulted in a substantial injury to the client, the public, the legal system, or the profession; or
- There is a likelihood of future misconduct by the respondent lawyer; or
- The misconduct was an intentional violation of the ethics rules.

## **PUBLIC REPRIMAND**

This type of discipline is public and is published together with the name of the respondent lawyer. A public reprimand is not available if:

- A public reprimand has been imposed upon the respondent lawyer within the preceding five-year period for a violation of the same disciplinary rule; or
- The respondent lawyer has previously received two or more public reprimands, whether or not for violations of the same disciplinary rule, within the preceding five-year period.

## **SUSPENSION FOR A TERM CERTAIN**

Commonly referred to as an “active suspension,” this public discipline means that the respondent lawyer is prohibited from practicing law for the length of the suspension. If the lawyer practices law during an active term of suspension, the conduct is a separate basis for further discipline and/or for contempt of the judgment. Upon the conclusion of an active suspension, the lawyer is eligible to practice law, provided that all other requirements for eligibility, such as payment of bar dues and compliance with continuing legal education, are current.

## **FULLY PROBATED SUSPENSION**

This type of discipline is public and is for a term certain; however, the suspension is “probated,” which means that the respondent lawyer may practice law during the period of suspension, but the lawyer must comply with specific “terms of probation” throughout the probated suspension period.

Terms of probation typically require that the respondent lawyer refrain from engaging in further misconduct; not violate any state or federal criminal statutes; keep the State Bar notified of current mailing, residential, and business addresses; comply with continuing legal education requirements; comply with the rules for maintaining trust accounts; and respond to any requests for information by CDC in connection with an investigation of allegations of misconduct.

Probation terms may also include, depending upon the facts of a particular case, that the respondent lawyer take additional continuing legal education, submit to a psychological evaluation, attend substance abuse counseling, practice law under the supervision of a designated monitor, or pay restitution and attorneys’ fees by a certain date. A fully probated suspension is not available if:

- A public reprimand or fully probated suspension has been imposed upon the respondent lawyer, whether or not for violations of the same disciplinary rule, within the preceding five-year period for a violation of the same disciplinary rule; or
- The respondent lawyer has previously received two or more fully probated suspensions, whether or not for violations of the same disciplinary rule, within the preceding five-year period; or
- The respondent lawyer has previously received two or more sanctions of public reprimand or greater imposed for conflict of interest, theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee.

In the event a fully probated suspension is not available, any sanction imposed must be for no less than 30 days of active suspension.

## PARTIALLY PROBATED SUSPENSION

This type of discipline is a combination of an active suspension followed by a period of probated suspension and is public.

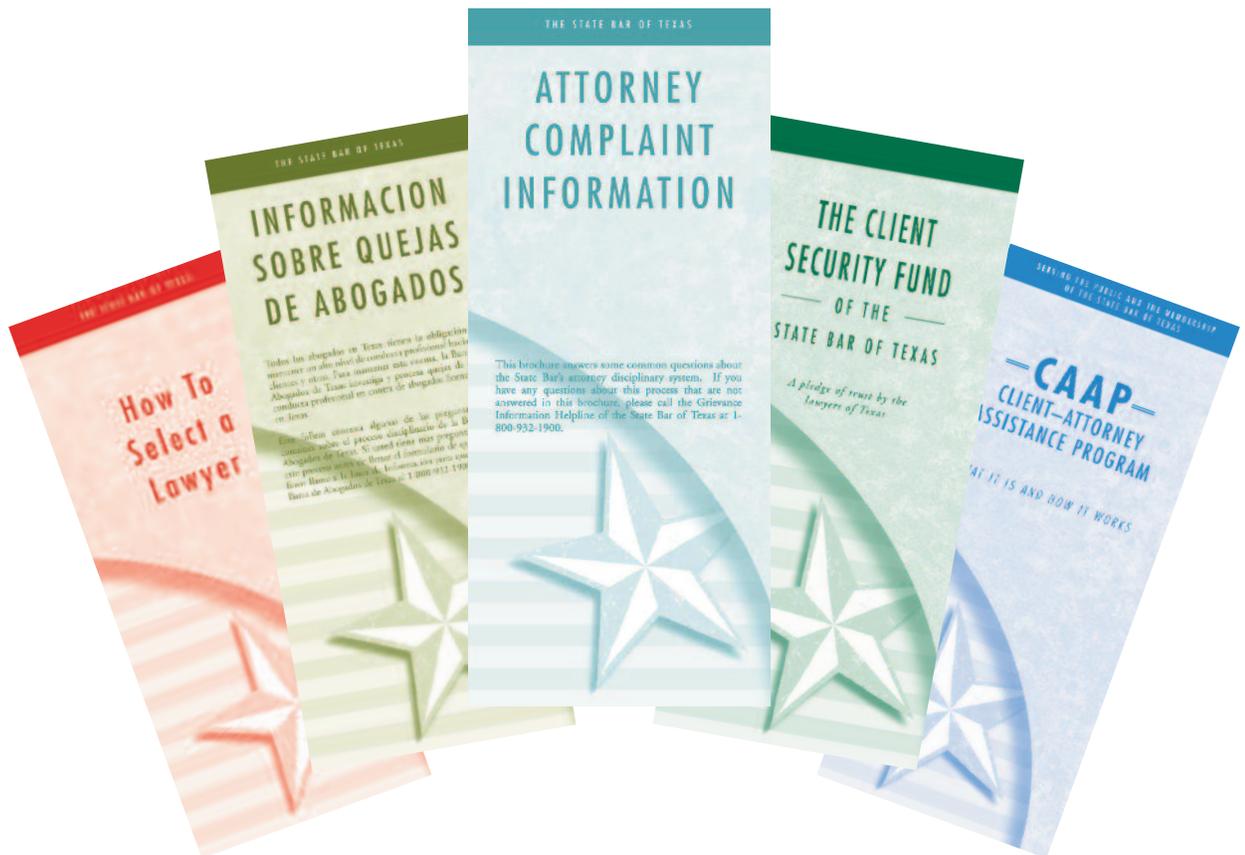
## DISBARMENT

This is the most severe discipline resulting in a complete loss of a respondent lawyer's license to practice law. Once disbarred, the lawyer's name is removed from the membership rolls of the Supreme Court and the lawyer is required to remit his or her law license and bar card.

After five years, a disbarred lawyer may petition a district court to be reinstated to the practice of law. The disbarred lawyer must prove that reinstatement is in the best interest of the public and the profession, as well as the ends of justice. If such an application is granted, the disbarred lawyer is not automatically granted a law license. The disbarred lawyer must still pass the bar exam administered by the Texas Board of Law Examiners.

## ANCILLARY SANCTIONS

Finally, the term "sanction" may include as an ancillary requirement: (1) restitution (which may include repayment to the Client Security Fund of the State Bar of any payments made by reason of the respondent lawyer's misconduct); and (2) payment of reasonable attorneys' fees and all direct expenses associated with the disciplinary proceedings.



# OTHER DISCIPLINARY PROCEEDINGS

## COMPULSORY DISCIPLINE

If an attorney has been convicted of or pleaded nolo contendere to, or has been put on probation, with or without an adjudication of guilt, for a serious or intentional crime (as those terms are defined in the TRDP), CDC will seek compulsory discipline.

Crimes that subject a lawyer to compulsory discipline include barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or property; any crime involving misapplication of money or other property held as a fiduciary; and any attempted conspiracy or solicitation of another to commit any of these crimes.

These proceedings are filed with the Board of Disciplinary Appeals. The criminal judgment or order of deferred adjudication is conclusive evidence of the attorney's guilt of the commission of the crime. If the criminal conviction of a serious or intentional crime is on appeal, the lawyer's license shall be suspended during the pendency of the appeal. Where the sentence includes any period of incarceration other than as a condition of probation, the lawyer shall be disbarred. Where the criminal sentence is fully probated, BODA has the discretion to either suspend for the period of criminal probation or disbar the attorney. A party appeals from a compulsory discipline decision to the Supreme Court of Texas. During the 2015-2016 bar year, 10 of the sanctions entered were a result of compulsory discipline cases.

## ASSUMPTION OF PRACTICE

Any interested person, including CDC or a client, may petition the district court in the county of the attorney's residence to assume jurisdiction of the attorney's law practice under certain circumstances. A district court can be petitioned to appoint a custodian for an attorney's files in the event that the attorney has died; disappeared; resigned; become inactive; been disbarred or suspended; or become physically, emotionally, or mentally disabled and cannot, as a result, provide legal services necessary to protect the interests of clients.

Upon the filing of a verified petition, the court issues a show cause order to the attorney or his or her personal representative or, if none, the person having custody of the lawyer's files, directing him or her to show cause why the court should not assume jurisdiction of the attorney's law practice. Upon establishment of grounds for the assumption, the court enters an order appointing one or more lawyers as custodians and ordering what must be done with respect to the files.

## INTERIM SUSPENSION

If CDC determines during the course of investigating a complaint that one or more grounds exist to support seeking an interim suspension of the respondent's law license, CDC can seek authority from the Commission to pursue an interim suspension.

If such authority is given, a petition is filed in a district court of proper venue, service is obtained on the respondent, and the court is to set a hearing within 10 days. The court may suspend the attorney pending final disposition of the disciplinary action if the court finds by a preponderance of the evidence that the respondent poses a substantial threat of irreparable harm to clients or prospective clients. Any of the following elements conclusively establishes such a substantial threat of irreparable harm:

- Conduct that includes all elements of a serious crime (as that term is defined in the disciplinary rules); or
- Three or more acts of professional misconduct as defined in the rules, whether or not there is harm; or
- Any other conduct that, if continued, will probably cause harm to clients or prospective clients.

## **RECIPROCAL DISCIPLINE**

If an attorney is disciplined in another jurisdiction where the attorney is licensed to practice law, CDC may seek the identical or “reciprocal” discipline. These proceedings are filed with the Board of Disciplinary Appeals. CDC files a petition for reciprocal discipline, which includes a certified copy of the order of discipline from the other jurisdiction and requests that the lawyer be disciplined in Texas. BODA notifies the attorney, who has 30 days to show why imposition of the identical discipline in Texas would be unwarranted. Defenses available to the attorney include the following:

- The procedure in the other jurisdiction was so lacking in notice or opportunity to be heard that the attorney was deprived of due process.
- There was such an infirmity of proof in the other jurisdiction that the conclusion that was reached should not be accepted as final.
- Imposition of identical discipline would result in grave injustice.
- That the misconduct established in the other jurisdiction warrants a substantially different discipline in this state.
- That the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute professional misconduct in this state.

Absent establishment of a defense, BODA shall impose discipline identical, to the extent practicable, with that imposed by the other jurisdiction. A party appeals a reciprocal discipline decision to the Supreme Court of Texas. During the 2015-2016 bar year, six of the sanctions entered were a result of reciprocal discipline cases.

## **DISABILITY SUSPENSION**

A disability is any physical, mental, or emotional condition that results in an attorney’s inability to practice law or to carry out his or her professional responsibilities. No substantive rule violation is required to find that an attorney has a disability.

If CDC during a just cause investigation, or an evidentiary panel during the course of an evidentiary proceeding, believes that an attorney is suffering from a disability, the matter is forwarded to BODA for appointment of a district disability committee. The district disability committee determines whether the respondent is, in fact, suffering from a disability and, if so, indicates such to BODA, which then enters an order suspending the attorney for an indefinite period.

The disability process tolls the four-year statute of limitations for disciplinary matters. During the 2015-2016 bar year, CDC sought and obtained one disability suspension.

## **REVOCAION**

Violation of any term of the probated portion of a suspension may subject a respondent lawyer to a “revocation” of the probation resulting in an active suspension from the practice of law. When a judgment is entered by an evidentiary panel of the grievance committee, the revocation proceeding is filed before BODA. When a judgment is entered by a district court, the revocation proceeding is filed with the district court. If CDC proves a violation of probation by a preponderance of the evidence, the probation is revoked and the respondent attorney is suspended from the practice of law without credit for any probationary period served. An order revoking a probated suspension cannot be superseded or stayed pending an appeal.

# GRIEVANCE SUPPORT

The Office of Chief Disciplinary Counsel in its administration of the Texas attorney discipline system is greatly supported by a number of other State Bar programs, departments, and Supreme Court-appointed committees. The work of these groups impacts the number of grievances filed against lawyers and/or provides rehabilitative assistance to lawyers who are disciplined.

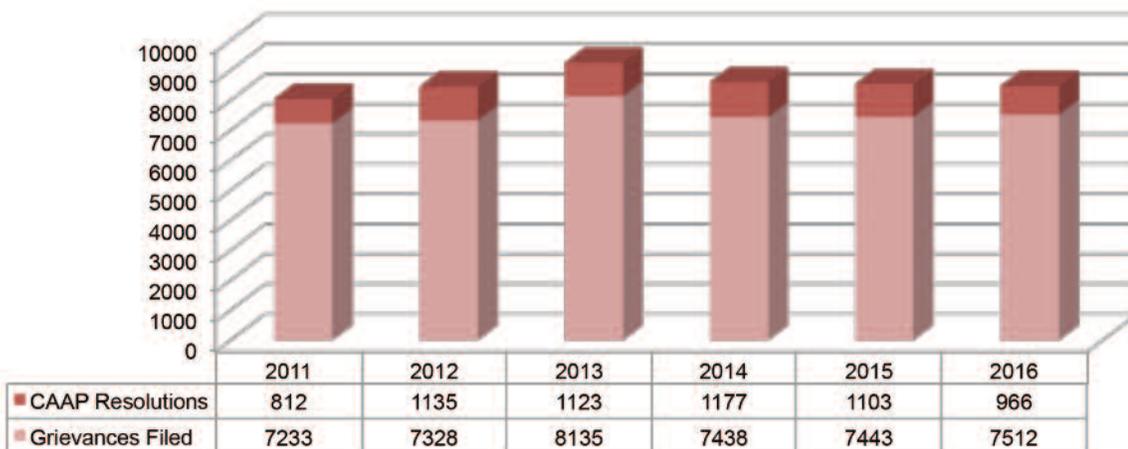
## CLIENT-ATTORNEY ASSISTANCE PROGRAM

The Client-Attorney Assistance Program is a voluntary confidential dispute resolution service of the State Bar of Texas. Its objective is to facilitate communication and foster productive dialogue to help Texas lawyers and their clients resolve minor concerns, disputes, or misunderstandings affecting the attorney-client relationship.

Last year, CAAP transitioned to a more holistic approach in answering the Grievance Helpline: providing information to the public about the Texas Disciplinary Rules of Procedure and the disciplinary process; educating the public about various self-help options for navigating the legal process in a single communication when possible; and intervening in the attorney-client relationship on the client’s behalf when necessary.

CAAP handled 14,339 live calls from the public and responded to more than 6,700 mail and email requests for forms, information, or resources while providing dispute resolution services for 966 Texas attorney-client relationships—successfully re-establishing productive communication in 85 percent of its cases.

Criminal cases continue to be the main concern of Texas legal clients, and CAAP assisted 2,567 Texas inmates, furthering the bar’s commitment to making justice accessible for all. Family law issues rank second in concern for CAAP clients, followed closely by questions regarding attorney disciplinary procedures. The most common complaints about Texas attorneys are the lack of comprehensive communication, a belief that the attorney has failed to properly prepare the legal matter, and that the attorney is withholding documents or information from client files.



\*CAAP Resolutions statistical data has modified from prior annual reports to indicate total number of cases closed irrespective of a grievance being filed.

\*Grievances Filed statistical data has been modified from prior annual reports to include total grievance filings within the year including those pending classification.



Chief Disciplinary Counsel Linda Acevedo, Commission members Gena Bunn, Vance Goss, and Bruce Ashworth.

## ADVERTISING REVIEW COMMITTEE

The Advertising Review Committee is responsible for reviewing lawyer advertisements and written solicitations as required by the Texas Disciplinary Rules of Professional Conduct. The ARC, through the State Bar's Advertising Review Department, manages the filing and review process for attorneys that market their services to the public to ensure that lawyers are complying with established ethical requirements.

In the 2015-2016 bar year, the department reviewed more than 3,600 submissions, with the largest category being electronic filings. Electronic media continues to be the focal point for Ad Review. To further the department's educational outreach, the department provides a free one-hour ethics credit presentation focused on attorneys using social media to disseminate information about their legal services. The department is also responsible for distributing non-filer notices to attorneys who have not filed an advertisement.

## LAW PRACTICE MANAGEMENT

The Law Practice Management Program was implemented by the State Bar of Texas to assist solo and small firm practitioners in the delivery of legal services by developing and promoting competent, professional, efficient, effective, economical, and innovative law office management practices. Often, a referral to the bar's Law Practice Management resources will be incorporated as a term of a disciplinary judgment, as many complaints stem from a lawyer's lack of knowledge in the appropriate management of his or her law practice.

For the 2015-2016 bar year, the program assisted more than 22,000 lawyers through online classes, live and video seminars, webcasts, local bar events, law school programs, website resources, and telephone and email inquiries. The Law Practice Management Program webpage provides resources to help attorneys start, maintain, and grow their law practices, including webcasts, articles, forms, and checklists available to aid attorneys in acquiring the skills they need to manage a law office effectively and avoid further practice management-related complaints.

## MINIMUM CONTINUING LEGAL EDUCATION DEPARTMENT

The State Bar of Texas requires that every attorney complete 15 hours of continuing legal education each year to maintain an active law license, three of which are required to be in the area of ethics. This requirement is known as Minimum Continuing Legal Education.

The State Bar MCLE Department ensures that attorneys comply with the regulations and also approves courses for MCLE credit. Attorneys may access and update their MCLE records on the State Bar of Texas website. The department also offers an MCLE course search, which allows attorneys to search all approved CLE-accredited courses by date, topic, location, or sponsor.

Failure to comply with MCLE requirements can result in an administrative suspension from the practice of law. Practicing while on an administrative suspension is a violation of the Texas Disciplinary Rules of Professional Conduct.



Commission Chair John Neal and Chief Disciplinary Counsel Linda Acevedo.

## TEXAS LAWYERS' ASSISTANCE PROGRAM

The State Bar of Texas established the Texas Lawyers' Assistance Program in 1989. TLAP's mission is to assist lawyers challenged by substance abuse and other mental health disorders that are interfering or may interfere with their ability to practice law in an ethical and professional manner. All assistance is confidential and may be accessed by calling (800) 343-8527.

In addition to educating law students, lawyers, and judges about the types of impairments studies show disproportionately impact the legal profession, TLAP offers a variety of intervention, assessment and referral, and rehabilitative services to impaired lawyers. Calls to TLAP come either directly from the lawyer challenged by a substance use disorder or by another disorder such as depression or cognitive impairment, or from a "concerned other," usually a friend, colleague, judge, or family member.

In the 2015-2016 bar year, the Lawyers' Assistance Program Committee continued its Global Firm Outreach initiative, which brings presentations regarding lawyer well-being to major law firms. Committee members also served as liaisons to the 10 law schools in Texas, allowing for outreach and support to law students. Additionally, the LAP Committee made presentations to local bar associations regarding health and well-being as well as suicide prevention, assisting staff in expanding outreach to lawyers in every region of the state. Highlights included making 10 presentations to some of the state's largest law firms, hosting of the 7th Annual Meeting of Deans of Student Affairs, and distributing the video *Courage, Hope and Help—TLAP Is There*. The LAP Committee supported TLAP staff in providing assistance to nearly 700 lawyers (an increase of 10 percent from the prior year), law students, and judges and conducting 158 presentations to almost 12,000 bar members across the state. Also of great significance, the State Bar led the way in raising more than \$500,000 for the Patrick D. Sheeran & Michael J. Crowley Memorial Trust, which provides funds for services to those being helped by TLAP but who cannot otherwise afford treatment.



## SHEERAN · CROWLEY MEMORIAL TRUST



STATE BAR OF TEXAS PUBLIC PROTECTION DOLLARS ACTUAL EXPENDITURES (UNAUDITED) FY2015-2016			
Commission for Lawyer Discipline	\$90,041	Texas Lawyers' Assistance Program	\$365,689
Office of Chief Disciplinary Counsel	\$8,923,929	Client-Attorney Assistance Program	\$540,508
UPL Committee	\$155,063		
Grievance Oversight Committee	\$48,814	Total General Fund	\$11,408,194
Professional Ethics Committee	\$12,497		
Board of Disciplinary Appeals	\$549,606	Client Security Fund - Claims Paid	\$797,014
Advertising Review	\$172,085		
Minimum Continuing Legal Education	\$549,962	Total State Bar Public Protection Dollars	\$12,205,208

## GRIEVANCE OVERSIGHT COMMITTEE

The Grievance Oversight Committee is charged to study, review, and advise the Supreme Court of Texas regarding the structure, function, and effectiveness of the discipline system. The GOC is composed of six attorneys and three public members appointed by the Supreme Court. The committee is not part of the State Bar disciplinary process and neither considers nor resolves individual complaints involving attorney-client issues. The committee maintains a website, [txgoc.com](http://txgoc.com), and welcomes comments and suggestions from all interested parties.

During the 2015-2016 bar year, the Commission and CDC provided the GOC with the following information:

- Statistical data for the discipline system, including the number of grievances received, classification decisions, classification appeals, just cause determinations, summary disposition decisions, and elections to evidentiary or district court;
- Quarterly reports provided to the State Bar Board of Directors regarding the disposition of disciplinary proceedings by bar district and statistics of sanctions imposed;
- Written consumer complaints and responses;
- Responses to disciplinary system questionnaires received by CDC;
- Portions of minutes from the Commission's meetings regarding non-case-specific topics.

## UNAUTHORIZED PRACTICE OF LAW COMMITTEE

The Unauthorized Practice of Law Committee is appointed by the Supreme Court of Texas and is charged with preventing the unauthorized practice of law. The UPLC is composed of nine volunteer lawyers and laypersons appointed to three-year terms.

The practice of law by persons who are not authorized to do so frequently hurts the clients they are trying to help, resulting in the loss of money, property, or liberty. The State of Texas limits the practice of law to persons who have demonstrated their knowledge of the law through education; who have passed a rigorous examination on the laws of Texas, including the rules of ethics; and who have passed a character review. The UPLC is prohibited from giving advisory opinions.

To ensure the public is protected from those who practice law illegally, the UPLC has divided the state into five regions: Northern, Central, Southern, Eastern, and Western. The UPLC has created 38 district subcommittees within the regions. Chairpersons are appointed to head the regional and district subcommittees. The busiest district subcommittees are Houston, Dallas, Austin, San Antonio, and Fort Worth. The UPLC maintains a website at [txuplc.org](http://txuplc.org), where individuals can fill out a complaint online and learn more about the workings of the committee.

*“Thanks for the article  
and for discussing  
the case  
with us this  
afternoon!”*

## PROFESSIONAL ETHICS COMMITTEE

The Professional Ethics Committee is a nine-member committee appointed by the Supreme Court of Texas pursuant to Texas Government Code section 81.091. The committee is charged with the responsibility of expressing opinions to questions regarding the propriety of professional conduct, which arise either upon a request for opinion by a State Bar member or upon the committee's own initiative. These opinions are published in the *Texas Bar Journal*. During the 2015-2016 bar year, the PEC issued seven opinions on the following subjects:

### OPINION 651 (NOVEMBER 2015)

Under the Texas Disciplinary Rules of Professional Conduct, a law firm is not required to include in the law firm's web site a notice warning persons who use the web site's email links that any confidential information transmitted to the law firm or one of its lawyers in such an email will not be treated as confidential and may be used against the person sending the information.

If a web site solicits email communications from potential clients and does not contain an effective warning notice concerning the absence of confidentiality with respect to information transmitted to a law firm or one of its lawyers by prospective clients who use an email link provided on the law firm's web site, the law firm's lawyers may be required to treat the information received in such emails from prospective clients as confidential and therefore not available for use against the person transmitting the information. Such limitations on the disclosure and use of confidential information received in emails from prospective clients may result in a conflict of interest for the law firm and its lawyers that would have to be addressed appropriately under the Texas Disciplinary Rules.

If a law firm's web site contains a warning notice substantially similar to that described in this opinion that must be affirmatively accepted before an email link on the law firm's web site is used to send an email to the firm or one of its lawyers, the law firm and its lawyers may use any information received in such email communications from persons who do not become clients of the law firm for the benefit of current and future clients of the firm and adversely to the person transmitting the information.

<https://www.legalethicstexas.com/Ethics-Resources/Opinions/Opinion-651.aspx>

### OPINION 652 (JANUARY 2016)

A lawyer may use a collection agency to collect past due fees owed by a client without violating the Texas Disciplinary Rules of Professional Conduct if the following conditions are met: (1) the lawyer is no longer handling the client's matter, (2) the fee is not unconscionable, (3) the lawyer has attempted other reasonable means of collection short of using a collection agency, (4) the lawyer retains control over the collection process, and (5) the lawyer reveals to the collection agency only the minimum amount of client information necessary to collect the debt.

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer may not, directly or indirectly, report a delinquent client to a credit bureau as this is not necessary to the collection of the debt, the effect is punitive, and it unjustifiably risks the unauthorized disclosure of confidential client information.

<https://www.legalethicstexas.com/Ethics-Resources/Opinions/Opinion-652.aspx>

### OPINION 653 (JANUARY 2016)

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer who is a party in a legal matter but who does not represent any other party in the matter may communicate concerning the matter directly with a represented adverse party without the consent of the adverse party's lawyer. However, a lawyer will violate the Texas Disciplinary Rules if the lawyer's communication with the adverse party involves dishonesty, fraud, deceit or misrepresentation.

<https://www.legalethicstexas.com/Ethics-Resources/Opinions/Opinion-653.aspx>

#### **OPINION 654 (MARCH 2016)**

A lawyer does not violate the Texas Disciplinary Rules of Professional Conduct by offering and giving free information about bail bonds and warrants to the public who visit the lawyer's office in response to the lawyer's offer to provide such free information. Under the Texas Disciplinary Rules of Professional Conduct, in doing so, the lawyer must honor such offers and take reasonable steps to ensure that any non-lawyer assistant who also offers and provides such information complies with the lawyer's professional obligations.

<https://www.legalethictexas.com/Ethics-Resources/Opinions/Opinion-654.aspx>

#### **OPINION 655 (MAY 2016)**

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer may not sell or transfer to a collection company accounts receivable owing by the lawyer's clients or former clients except with the clients' consent, after consultation with the lawyer, to the disclosure of confidential information incident to such sale or transfer.

<https://www.legalethictexas.com/Ethics-Resources/Opinions/Opinion-655.aspx>

#### **OPINION 656 (MAY 2016)**

Under the Texas Disciplinary Rules of Professional Conduct a lawyer and a law firm may not enter into an agreement for the lawyer to serve as a member of the law firm if the agreement provides that the lawyer is restricted or prohibited from providing legal services to clients of the law firm after the lawyer's work with the law firm ends.

<https://www.legalethictexas.com/Ethics-Resources/Opinions/Opinion-656.aspx>

#### **OPINION 657 (MAY 2016)**

In general, the documents, papers and other information received from a client or received or generated in the course of representing the client, including work product and notes, are the property of the client. When a lawyer receives a request for those materials from a former client, the lawyer must make those materials available for delivery to the former client, except as prohibited by statute, court order or the lawyer's duties to third parties or the client, or unless the lawyer is permitted by law to retain those documents and can do so without prejudicing the interests of the client in the subject matter of the representation.

A lawyer must make the client's file available for transfer to the client or a designated representative at the lawyer's office. The lawyer may require the client to pay any delivery or shipping expenses associated with delivering the file to the former client at a location other than the lawyer's office. If the lawyer deems it necessary to retain a copy of the file, that expense will be borne by the lawyer in the absence of an agreement otherwise.

The lawyer may provide the client's file in the form in which it is maintained, or convert some or all of it to paper or to a reasonably accessible electronic format for delivery to the client. However, if some of the information in the file is maintained in a special format that is not reasonably accessible to the ordinary client, the lawyer must bear the cost of converting the information to a reasonably accessible format, or print the information in a format that can be read by the client. If the client's file contains material that has unique or significant value in the form originally acquired by the lawyer, such material should be returned to the client in its original form.

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## STATE BAR OF TEXAS — A FEW STATS

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<b>98,671</b>	<b>Active members</b>
<b>48</b>	<b>Median age of Texas lawyers</b>
<b>1:312</b>	<b>Ratio of all Texas lawyers to Texans</b>
<b>1:568</b>	<b>Ratio of private practitioners to Texans</b>
<b>65</b>	<b>Percentage of Texas lawyers who are private practitioners</b>
<b>10</b>	<b>Percentage who are government lawyers</b>
<b>11</b>	<b>Percentage who are corporate/in-house counsel</b>
<b>84</b>	<b>Percentage of Texas lawyers in the four largest metropolitan areas</b>
<b>7</b>	<b>Percentage of private practitioners who work in firms with 200 or more lawyers</b>
<b>40</b>	<b>Percentage of private practitioners who work in firms with five or fewer attorneys</b>
<b>\$115,000</b>	<b>Median income for Texas lawyers (Source: 2015 Attorney Survey)</b>
<b>\$105,000</b>	<b>Median income for solo practitioners (Source: 2015 Attorney Survey)</b>
<b>29,517</b>	<b>Courses certified last year by MCLE department</b>
<b>3,638</b>	<b>Advertisements reviewed by Advertising Review Committee</b>

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## **A TOOL FOR CONSUMERS**

*The State Bar of Texas website includes a*

### ***“Find-a-Lawyer”***

*function that allows consumers to access information about Texas lawyers.*

*More than 400,000 searches are conducted each month,*

*by about 120,000 unique visitors.*

*Each attorney profile lists public disciplinary actions in which there was a final judgment within the past 10 years.*

*The site lists only the type of action and its term (i.e., public reprimand, suspension, etc.). Users are directed to contact the Office of Chief Disciplinary Counsel for more details on the sanction.*



**STATE BAR** *of* **TEXAS**  
**Commission For Lawyer Discipline**

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