



Thumbnail Guide to Texas Ethics

The Texas Young Lawyers Association has prepared the following overview of the attorney discipline process and some of the most frequently violated rules of professional conduct. A webcast, "Understanding the Grievance Process," is available through TexasBarCLE's Online Classroom at www.texasbarcle.com. Participants can earn 1.75 hours of MCLE ethics credit.

Overview of the Grievance Procedures

Filing — The grievance process begins when a complainant files a grievance form with one of the regional offices of the Chief Disciplinary Counsel. A copy of the form is available at www.texasbar.com.

Classification — Once a Grievance is filed, the Chief Disciplinary Counsel has 30 days to determine if it alleges a violation of the Texas Disciplinary Rules of Professional Conduct or other professional misconduct. Grievances that allege professional misconduct are classified as *Complaints*, and those that do not are classified as *Inquiries* and dismissed. The Chief Disciplinary Counsel's decision to classify a Grievance as an Inquiry may be appealed to the Board of Disciplinary Appeals. See TEX. R. DISCIPLINARY P. 1.06, 2.10.

Response — If a Grievance is classified as a Complaint, the Chief Disciplinary Counsel gives notice and a copy of the Complaint to the attorney against whom the grievance is filed, and the attorney has 30 days to deliver a response. See TEX. R. DISCIPLINARY P. 2.10.

Just Cause Determination — Within 60 days of the response deadline, the Chief Disciplinary Counsel investigates the Complaint to determine whether there is *Just Cause* to believe that professional misconduct has occurred. If the Chief Disciplinary Counsel determines that there is no Just Cause to proceed on the Complaint, the case is presented to a *Summary Disposition Panel* comprised of local grievance committee members. If the Panel accepts the Chief Disciplinary Counsel's determination, the Complaint is dismissed. Otherwise, the Panel votes to proceed on the Complaint. See TEX. R. DISCIPLINARY P. 2.12, 2.13.

Election of Forum — If the Chief Disciplinary Counsel finds Just Cause – or if the Summary Disposition Panel rejects the recommendation to dismiss the Complaint – the attorney has 20 days to elect whether the Complainant will be tried in *District Court* or before an *Evidentiary Panel* comprised of members of the local grievance committee. If the attorney does not make an election, the Complaint will

be tried before an Evidentiary Panel. The lowest form of sanction, a private reprimand, is only available if the Complaint is tried before an Evidentiary Panel. A jury is only available in District Court. See TEX. R. DISCIPLINARY P. 2.15, 3.06, 3.10.

Trial — After the attorney has made an election, the Chief Disciplinary Counsel files a Petition in the name of the *Commission for Lawyer Discipline*. If the attorney has elected to have the Complaint tried before an Evidentiary Panel (or has not made an election), the Petition is filed with the Evidentiary Panel. If the attorney has elected District Court, the Petition is filed with the Clerk of the Supreme Court, who transmits it to the District Court after a judge is appointed by the Supreme Court to preside over the case. The presiding judge must be an active district judge from outside the administrative judicial district where the attorney resides. In District Court, either the Commission or the attorney may demand a trial by jury, although the judge still determines the appropriate sanctions to be imposed. In either forum, the action must be set for trial on the merits within 180 days after the answer is filed. Trial can be avoided by an agreed settlement between the attorney and the Commission. See TEX. R. DISCIPLINARY P. 2.17, 2.18, 3.01, 3.02, 3.03, 3.06, 3.07, 3.09.

Sanctions — There are eight available sanctions for professional misconduct, ranging from a private reprimand to a suspension for a term certain to disbarment. Sanctions may also include restitution and payment of attorneys' fees. A private reprimand is not available in District Court. See TEX. R. DISCIPLINARY P. 1.06, 3.10, 15.11.

Appeal — The judgment of an Evidentiary Panel may be appealed to the Board of Disciplinary Appeals, and an appeal from the Board of Disciplinary Appeals may be taken to the Supreme Court of Texas. The final judgment of a district court may be appealed in the same way civil cases are generally appealed. See TEX. R. DISCIPLINARY P. 2.24, 2.28, 3.16, 7.11.

TDRPC Rules Governing Common Complaints

Of all the grievances filed each year against Texas attorneys, among the most common are allegations of neglect, failure to communicate, and complaints about withdrawal or termination of representation. The following is a quick summary of the rules governing those complaints:

Neglect — Rule 1.01(b) states that a lawyer “shall not: (1) neglect a legal matter entrusted to the lawyer; or (2) frequently fail to carry out completely the obligations that the lawyer owes to a client or clients. “Neglect” is defined as “inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.” TEX. DISCIPLINARY R. PROF’L CONDUCT 1.01(b), (c).

Failure to Communicate — Rule 1.03 requires a lawyer to “keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information” and also to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” TEX. DISCIPLINARY R. PROF’L CONDUCT 1.03.

Withdrawal — Although a lawyer is required to withdraw from representing a client in certain circumstances, Rule 1.15 provides that a lawyer otherwise may not withdraw unless: “(1) withdrawal can be accomplished without material adverse effect on the interests of the client; (2) the client persists in a course of action involving the lawyer’s services that the lawyer reasonably believes may be criminal or fraudulent; (3) the client has used the lawyer’s services to perpetrate a crime or fraud; (4) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent or with which the lawyer has fundamental disagreement; (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer’s services, including an obligation to pay the lawyer’s fee as agreed, and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or (7) other good cause for withdrawal exists.” TEX. DISCIPLINARY R. PROF’L CONDUCT 1.15(b).

Termination — Rule 1.15 provides that “[u]pon termination of representation, a lawyer shall take steps to the extent reasonably

practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned.” The rule authorizes a lawyer to “retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.” TEX. DISCIPLINARY R. PROF’L CONDUCT 1.15(d).

Helpful Resources

Client-Attorney Assistance Program (CAAP) (800) 932-1900 — CAAP is a statewide dispute resolution program and service of the State Bar of Texas. CAAP can assist clients and attorneys resolve minor problems affecting their relationships when the issues do not involve misconduct under the Texas Disciplinary Rules of Professional Conduct.

Attorney Ethics Helpline (800) 532-3947 — The State Bar of Texas maintains a toll-free Attorney Ethics Helpline, which is operated 8:00 a.m. to 5:00 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 given is designed to give attorneys guidance on how to access the rules, ethics opinions and case law so they can make informed ethical decisions.

Professional Ethics Opinions — Copies of the opinions of the Supreme Court Professionalism Committee are available on the website for the Texas Center for Legal Ethics and Professionalism at www.txethics.org.

Where to Find the Ethics Rules

The Texas Disciplinary Rules of Professional Conduct can be found in Article X, Section 9 of the State Bar Rules, which is located in the Government Code. *See* TEX. GOV’T CODE, tit. 2, subtit. G app. A. The Texas Rules of Disciplinary Procedure can also be found in the Government Code. *See* TEX. GOV’T CODE, tit. 2, subtit. G app. A-1. Both sets of rules are available at www.txethics.org and www.texasbar.com.