



STATE BAR MILITARY AND VETERANS LAW SECTION

HOW TO AVOID GRIEVANCES AND THE GRIEVANCE COMMITTEE




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Top 5 Areas of Misconduct

- Communication-28%
- Integrity-24%
- Neglect-23%
- Declining/Terminating Representation-14%
- Safeguarding property-11%



Impact of the Pandemic

- Remote Work
 - Communication with other lawyers and staff
 - Inattention to detail—distractions
 - Changing court rules and procedures
 - Safeguarding confidential information
 - Technology challenges
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Impact of the Pandemic

- Mental Health Issues
- No beginning and end of the work day, so no work life balance
- Lawyers are wearing too many hats
- Financial stress
- PTSD

AVOID CONFLICTS!

How to Avoid Conflicts That Give Rise to Malpractice and Breach of Fiduciary Duty Claims!

- You owe a duty to each client, so each client should have a separate lawyer!
- Never ask a client to waive a conflict!
- Never ignore a conflict!
- Don't defend your work in Court!



Engagement Letters Are Essential!

- Contents of engagement letters.
 - Clearly list all persons and entities to be represented.
 - Clearly define the scope of representation.
 - Define whether hourly rates will change during the course of the representation, how expenses will be handled, the right to withdraw for non-payment and the use of retainers.



Multi-client representation letters

Attorneys are confronted with multiple individual clients, partnership interests, trusts and other entities.

- The client should confirm that there are no conflicts.
- The client will inform you if a conflict occurs.
- Each client should consent to joint representation.
- Recommend that each client get a separate lawyer.
- This letter will be Plaintiff's Exhibit "1", so get it right!

Other Multi-Client Issues

- Rule 1.06 – the “transactional client” rule.
 - The lawyer does not represent the parties, but rather represents the transaction, such as the preparation of a partnership agreement.
- Rule 1.07 – the “intermediary rule.”

Other Multi-Client Issues

- Both Rules 1.06 and 1.07 require strict compliance.
- Use Draft Rule 1.07 Conflicts Checklist.

BE WARY OF NON-CLIENTS WHO MAY SUE OF FILE A GRIEVANCE!

- Under certain circumstances a lawyer may be required to inform a non-client that he or she is a “non-client” and is not being represented. *Parker v. Carnahan*, 772 S.W. 2d 151
- Was the lawyer aware or should the lawyer have been aware that the lawyer’s conduct would lead a reasonable person to believe that the reasonable person was being represented by the attorney?

Communication

- Texas Rule 1.03
- A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

PAPER IS PATIENT, SO GET IT IN WRITING!

- Fee Agreements.
- Multiple client representation letters.
- Agreements to limit the scope of representation.
- Offers of settlement from the other side.
- Recommendations against taking certain actions.
- Rejecting potential clients—statute of limitations.
- Writings will protect you from the foibles of human memory.

RUN YOUR LAW PRACTICE LIKE YOU RUN YOUR HOME!

- Treat clients like guests: You don't just let anybody into your house, so don't take just anyone with money as a client.
- Think about what could go wrong with the representation. You do that for your clients, so use this same skill in deciding whether or not to represent a client.

DON'T BE GREEDY OR DESPERATE!

- Greed and desperation make you ignore your instincts.
 - Take cases you should reject.
 - Ask for fees you do not deserve.
 - Ignore conflicts that should stop you cold.

TERMINATION OF FEE AGREEMENTS

- Rule 1.15(d)—The lawyer may 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.
- Assertion of an attorney's lien on file is very risky!
- Surrender the client's **original file**—lawyer may retain a copy.
- Put termination of the fee agreement in writing to confirm attorney/client relationship is over.



The Grievance Process

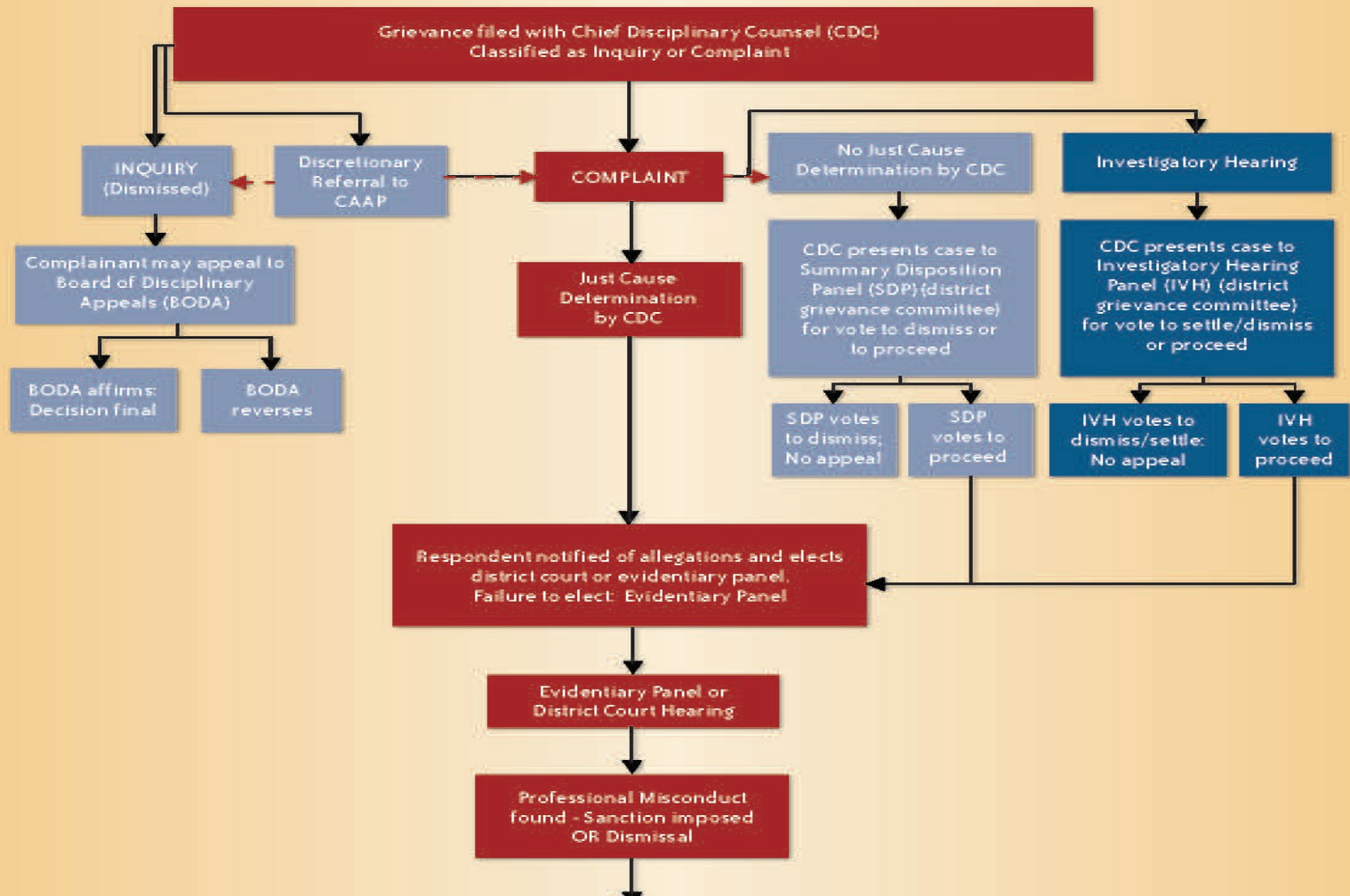



What You Should Do

- Take a deep breath and don't panic!
- Gather your file and refresh your memory.
- Retain Counsel!

GRIEVANCE PROCESS FLOW CHART

— PROCESSING A GRIEVANCE —





TEX. R. PROF CONDUCT
8.04(a)(8)


A lawyer who fails to respond to a grievance
commits misconduct.



TEX. R. DISC. P 2.10B

If the Grievance is determined to constitute a Complaint, the lawyer has 30 days to respond in writing.


The CDC can send the Complaint to law enforcement—Rule 6.08.



THE ATTORNEY CANNOT CONTEST CLASSIFICATION OF A “COMPLAINT”



Some Statistics


- In 2021 Bar year, 7007 grievances filed
 - 4,870 classified as inquiries and dismissed
 - 1,078 appeals by complainants to BODA
 - Only 89 were reclassified as complaints
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Summary Disposition

- No appearance is required
- Dismissed on written submission
- Summary Disposition Panel has to agree
- Can request additional information



Investigatory Hearing

- Purpose to determine if complaint should proceed and opportunity to settle
 - Proceeding before a grievance panel
 - Informal, but testimony is under oath
 - Can be used as discovery tool
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Investigatory Hearing

- At end of hearing, CDC may have ex parte discussion with the panel
- Panel votes to proceed, dismiss or offer a settlement
- No appeal from an action by IVH panel

Trial

- If just cause is found, attorney has option to proceed before a panel or in district court
- If proceed before a panel, a private reprimand may be obtained
- Least sanction in district court is a public reprimand.

Sanctions—Rule 15.02

- Consider-
- The duty violated
- Attorney's level of culpability
- Potential or actual injury caused
- Existence of aggravating or mitigating factors

Appeal

- Either the Commission or the attorney may appeal
- In district court, it is to the court of appeals
- A panel's decision is appealed to BODA

More Statistics

- Disbarments—18
- Resignations in lieu of discipline—15
- Suspensions—123
- Public reprimands—36
- Private reprimands—100
- Grievance referral program—80
- Total--372



Conclusion

- Communicate, communicate, communicate!
 - Avoid Conflicts!
 - Watch out for unintended clients.
 - If you get a grievance take a deep breath and hire a lawyer.
 - Most of the time, you will be ok!
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