

 **BCBA**  
Bell County Bar Association

# Grievance Procedures

## September 22, 2022

Robert S. “Bob” Bennett

The Bennett Law Firm, P.C.

Houston, Texas

Cell: 832.566.1490

Work: 713.225.6000

Email: [bob@bennettlawfirm.com](mailto:bob@bennettlawfirm.com)

# Re: State Bar of Texas – “Big Business”

- In fiscal 2016-17, the state bar collected around \$42.1 million in revenue and spent about \$40.2 million.
- The state bar maintains a reserve fund, which as of August 1, 2017, the SBOT has set aside \$9,215,384 in general fund reserves.
- The state bar employed approximately 270 staff in fiscal 2016-17. The SBOT would have been discontinued September 1<sup>st</sup>, 2017, if SB 302 had not been passed and signed by Governor Abbott.

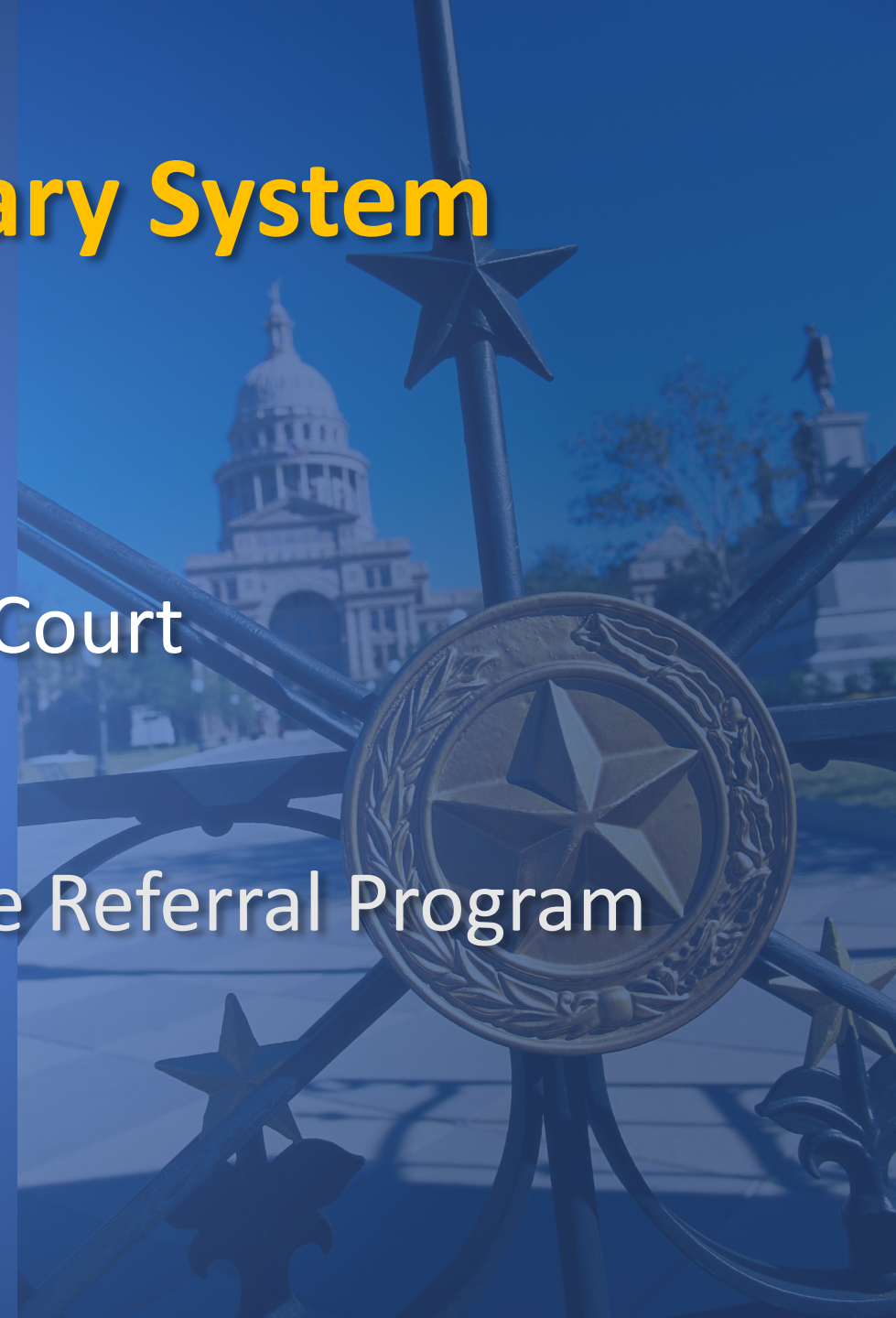


# Thomas Watkins, Former Member Commission for Lawyer Discipline

- Estimates that every new attorney licensed after 1999 will have at least two disciplinary complaints filed against them during their career.
- “Texas has one of the most complicated and expensive systems for handling grievance in the country.”

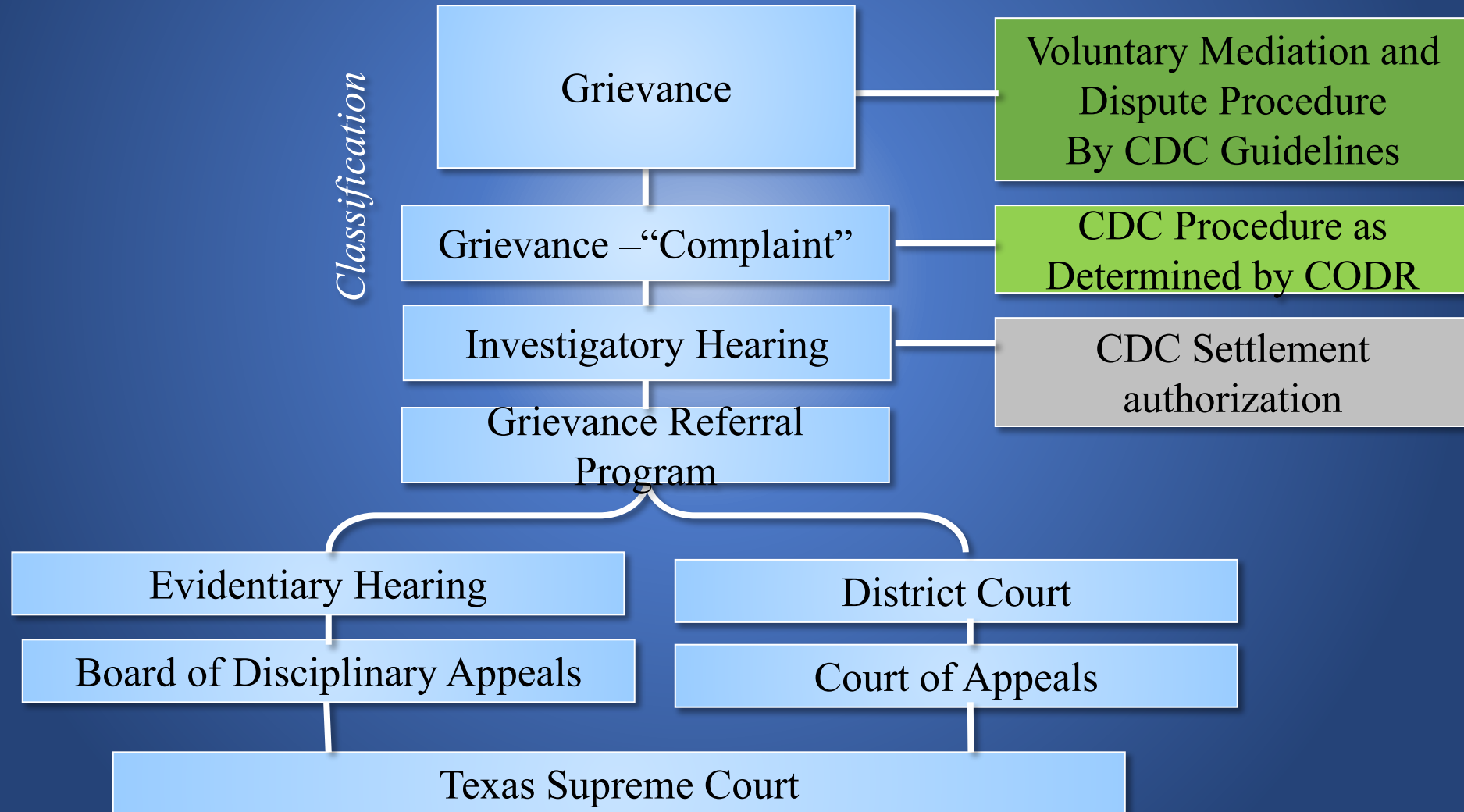
# The Present Disciplinary System

- Inquiry vs. Complaint
- Investigation By The OCDC
- Evidentiary Hearing / Civil District Court
- BODA / Supreme Court
- Punishment ranges from Grievance Referral Program to Disbarment



# State Bar of Texas - Effective March 2018

## Attorney Disciplinary System In Action





# 1. Committee on Disciplinary Rules

- SB 302 85R, Sec. 81.0872, establishes the Committee on Disciplinary Rules—consisting of nine members:
- three attorneys appointed by the president of the state bar;
- one nonattorney public member appointed by the president of the state bar;
- four attorneys appointed by the supreme court;
- one nonattorney public member appointed by the president of the supreme court.
- FUNCTION is to oversee the initial process for proposing a disciplinary rule under Section 81.0875.

## 2. CDC Settlement Authority

Added in Sec. 81.081:

- The CDC shall develop a process to identify a complaint that is appropriate for settlement attempt or an investigatory hearing before a trial is requested or the complaint is placed on a hearing docket.
- The CDC may **authorize a settlement at any time** during the disciplinary process.



Added in Sec. 81.086:

- The CDC may hold investigatory and disciplinary hearings by teleconference.



### 3. Establishing Minimum Standards and Procedures

Sec. 81.072 is amended by (b-3) as follows:

- In establishing minimum standards and procedures for the attorney disciplinary and disability system, the supreme court must ensure that an attorney has an opportunity to respond to all allegations of alleged misconduct.



***Are attorney rights and due process  
being protected?***

# 4. Ombudsman For Attorney Discipline System

The ombudsman will:

- (1) review grievances
- (2) receive complaints about the system
- (3) receive and investigate complaints
- (4) answer questions from the public
- (5) assist members of the public wishing to submit a lawyer grievance
- (6) make recommendations to the board of directors and the supreme court for improvements

A yellow speech bubble with a black outline and a drop shadow, pointing downwards. It contains the text "WOULD YOU WANT THIS JOB?" in blue, all-caps, sans-serif font.

WOULD YOU WANT  
THIS JOB?

## 5. Barratry—Improper Solicitation

The chief disciplinary counsel's cooperation with local, state, or federal agencies in the investigation or prosecution of civil actions or criminal offenses related to barratry, including the number of grievances the chief disciplinary counsel referred to or received from a law enforcement agency.





## 6. Attorney Self Reporting

The CDC shall develop guidelines and a procedure for an attorney to self report:

- Any *criminal* offenses committed by the attorney; and
- Any disciplinary action taken by another state's bar against the attorney.



## 7. National Lawyer Data Bank

- Added by Sec. 81.085, the CDC will regularly search the National Lawyer Regulatory Data Bank maintained by the American Bar Association to identify a member of the state bar who is disciplined in another state.

## 8. Online Attorney Profiles

- Added to Sec. 81.115, an attorney's profile must now include a link on the attorney's online profile to the full text of the disciplinary judgment entered by a district grievance committee or district judge.





# 9. New Sanction Guidelines

Added by Sec. 81.083:

The chief disciplinary counsel shall propose and the supreme court shall adopt by rule sanction guidelines to:

- (1) associate a specific rule violation or ethical misconduct with a range of appropriate sanctions;
- (2) provide aggravating and mitigating factors that justify deviating from the established sanctions; and
- (3) provide consistency between complaints heard by a district grievance committee and complaints heard by a district court.

The chief disciplinary counsel shall ensure that interested parties are provided an opportunity to comment on the proposed sanction guidelines.

**Federal Criminal Guidelines?**

# 10. Teleconferences

Added by Sec. 81.086:

- The CDC may hold investigatory and disciplinary hearings by teleconference.





# 11. Issuance Of Subpoena; Objection

- Added by Sec. 81.080. ISSUANCE OF SUBPOENA; OBJECTION:
- (a) On approval of the presiding officer of the appropriate district grievance committee, the chief disciplinary counsel may, during an investigation of a grievance, issue a subpoena that relates directly to a specific allegation of attorney misconduct.
- (b) The chief disciplinary counsel shall provide a process for a respondent to object to a subpoena issued.





## 12. Fingerprint-Based Criminal Record

This bill would allow the state bar to keep these fingerprint-based criminal history records on file forever, which could amount to a government monitoring system imposed through occupational licensing, according to the HRO.



# Evidentiary Hearing

- Evidentiary Hearing or Civil Court Trial
- Private reprimand only available if administrative procedure followed



# Civil Jury Trial

- Civil Rules of Procedure & Evidence apply
- No private reprimand available



# Most Common Rule Violations

Under Current Legislation



# STATISTICAL DATA



Provided by the State Bar Report of  
the CLD, 2016-2017

# Violations: Communication – 28%

## 1.03: Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and properly comply with reasonable requests for information

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

# Violations: Integrity – 27%

8.01: Bar Admission, Reinstatement, and Disciplinary Matters

8.02: Judicial and Legal Officers

8.03: Reporting Professional Misconduct

8.04: Misconduct

8.05 Jurisdiction



# Violations: Neglect – 17%

## 1.01: Competent and Diligent Representation

(b) In representing a client , 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.

(c) As used in this Rule “neglect” signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

# Violations: Declining or Terminating Representation – 15%

- 1.15(d): Upon 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 payment of fee that has not been earned.**

# Violations: Safeguarding Property – 13%

- Being Responsible in Trust Account Management
- Safeguarding Client Property



# Violations: Conflicts – <1%

1.06 Conflict of Interest: General Rule

1.07 Conflict of Interest: Intermediary

1.08 Conflict of Interest: Prohibited Transaction

1.09 Conflict of Interest: Former Client

## Violations: Fees – <1%

- Illegal or Unconscionable Fee
- Contingency Fees
- Division of a Fee
- Refundable vs. Non-Refundable Retainers

# Violations: Advertising & Solicitation – <1%

- Lawyer Advertising is regulated by Part VII of the Texas Disciplinary Rules of Professional Conduct.
- Regulations are implemented and enforced by the Advertising Review Committee and the Advertising Review Department of the State Bar of Texas.
- Purpose: To protect the public from lawyer advertising that is false, misleading or deceptive.



# Violations: Tribunals – <1%

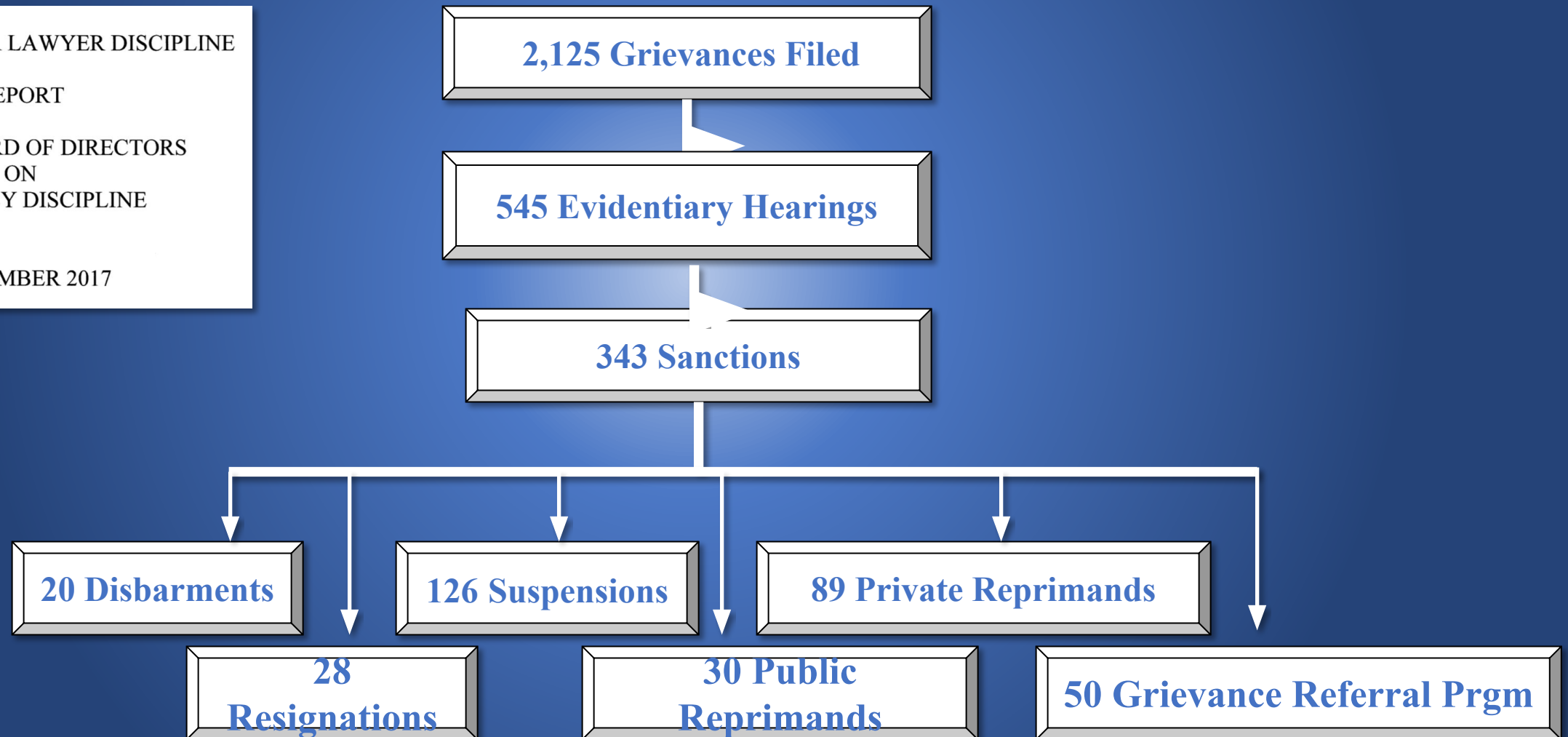
- 3.01: Meritorious Claims and Contentions
- 3.02: Minimizing the Burdens and Delays of Litigation
- 3.03: Candor Towards the Tribunal
- 3.04: Fairness in Adjudicatory Proceedings
- 3.05: Maintaining Impartiality of Tribunal
- 3.06: Maintaining Integrity of Judicial System

# Violations: Non-Client Relationships – <1%

- 4.01: Truthfulness in Statements to Others
- 4.02: Communication with One Represented by Counsel
- 4.03: Dealing with Unrepresentative Person
- 4.04: Respect for Rights of Third Persons

# Total Sanctions: 2016-2017

COMMISSION FOR LAWYER DISCIPLINE  
REPORT  
TO THE BOARD OF DIRECTORS  
ON  
ATTORNEY DISCIPLINE  
SEPTEMBER 2017





# Protections For Attorneys

1. Use the ethics Helpline.

SBOT Ethics Helpline 1-800-532-3947

2. Review Written Ethics Opinions

3. Know the Advertising Rules

4. Keep Client files

5. Keep Telephone Logs – MyCase

6. Maintain Written Records - MyCase

\*As Provided by the Texas Center  
For Legal Ethics

# Protections For Attorneys

7. Keep Your Client Fully Informed
8. Return Phone Calls Promptly
9. Do Not Engage Sex With Client
10. Use Your Local Bar Association's Fee Dispute Committee
11. Train Your Staff
12. Take Advantage of Bar Resources
13. Beware of Substance Abuse and Stress
14. Maintain Professional Relationships

\*As Provided by the Texas Center  
For Legal Ethics

# Handling a Grievance

- Take it seriously – You may be convinced that you did nothing wrong, but the CDC may see things differently.
- Prepare a thorough response – Under the new system, a thorough response is even more important, since there is not investigatory hearing.



# Mental Health & Wellness for Attorneys

## Major Problems for Attorneys:

- Stress / Anxiety
- Depression
- Burnout / Secondary Trauma
- Alcohol / Substance Abuse
- Cognitive Impairment
- Suicide
- Gambling and other process addictions

# Mental Health & Wellness for Attorneys

## Kinds of Traumas Lawyers Experience:

- Threats from criminal defendants
- Seeing a client lose a custody matter
- Being yelled at by a client
- Dealing with serious injuries and death
- Being devastated by a result
- Seeing a client go to prison
- Attorney or judge conflict
- dealing with assaults

# Mental Health & Wellness for Attorneys

## TLAP Provides:

- Confidential support
- Referrals to licensed professionals with the experience or expertise you need
- Information about local group support and resources
- One-to-one local peer support
- Self-care information
- CLE / Education on Wellness
- Service opportunities



# Mental Health & Wellness for Attorneys

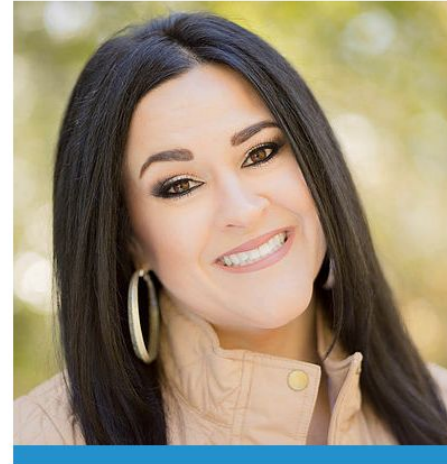
## The Texas Lawyers Assistance Program Team



Chris Ritter, J.D.  
TLAP Director  
chris.ritter@texasbar.com



Shawna Storey-Lovin, MA, LPC-S  
Clinical Professional  
shawna.storey-lovin@texasbar.com



Erica Grigg, J.D.  
Staff Attorney  
erica.grigg@texasbar.com



Penni Wood  
Administrative Assistant  
penni.wood@texasbar.com

## Handling a Grievance

- Take it seriously – You may be convinced that you did nothing wrong, but the CDC may see things differently.
- Prepare a thorough response – Under the new system, a thorough response is even more important, since there is not investigatory hearing.

## Resources For Ethics

Sources for help with ethics questions:

1. State Bar of Texas Ethics Hotline. 1-800-532-3947
2. Texas Center for Legal Ethics.  
(<http://www.legalethicstexas.com/Home>)
3. University of Houston Law Center – Texas Ethics Reporter.  
(<http://www.law.uh.edu/libraries/ethics/>)
4. State Bar of Texas Advisory Network.  
(<http://www.texasbar.com/AM>)
5. Cornell University Legal Information Institute.  
([https://www.law.cornell.edu/wex/legal\\_ethics](https://www.law.cornell.edu/wex/legal_ethics))



# Final Thought

- Get Help!
- A Grievance can mean serious business. You shouldn't try to do it alone.
- Remember – A lawyer who represents himself has a fool for a client.

## Rule 8.4: Misconduct

# ABA Model 8.04

- It is professional misconduct for a lawyer to:
- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.