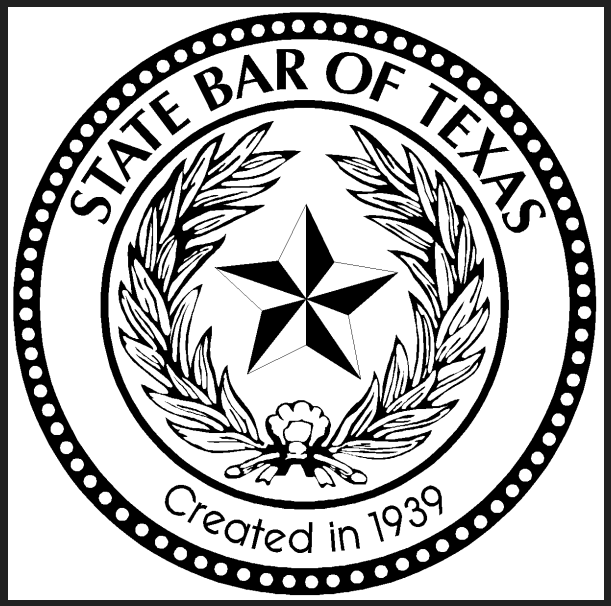
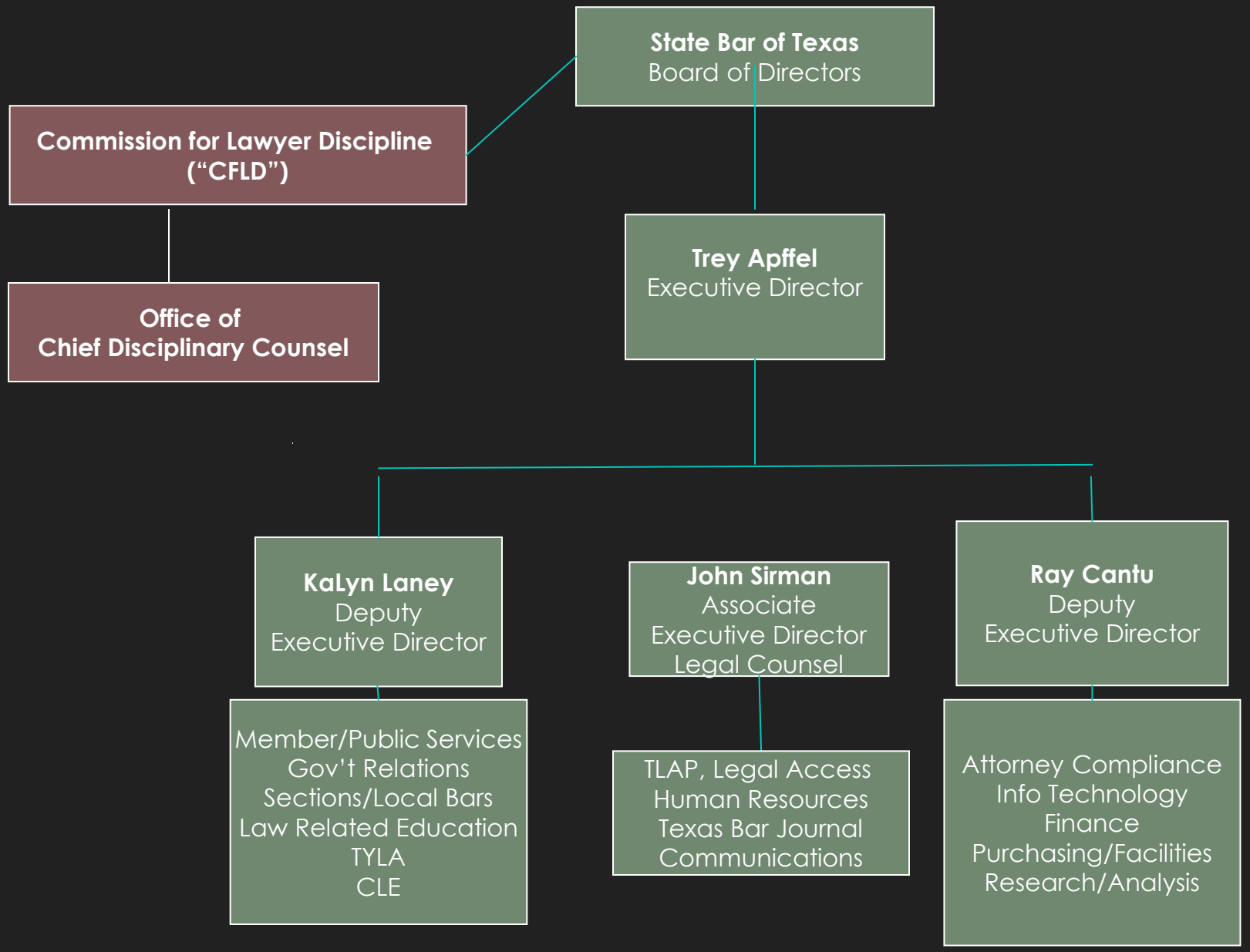


An Understanding of the Grievance Process


State Bar of Texas
Board of Directors
Commission for Lawyer Discipline
("CFLD")
Office of
Chief Disciplinary Counsel
Trey Apffel
Executive Director
KaLyn Laney
Deputy
Executive Director
John Sirman
Associate
Executive Director
Legal Counsel
Ray Cantu
Deputy
Executive Director
Member/Public Services
Gov't Relations
Sections/Local Bars
Law Related Education
TYLA
CLE
TLAP, Legal Access
Human Resources
Texas Bar Journal
Communications
Attorney Compliance
Info Technology
Finance
Purchasing/Facilities
Research/Analysis

Chief Disciplinary Counsel

- Administers Texas attorney discipline system
- Represents Commission for Lawyer Discipline in disciplinary litigation
- 4 Regional Offices (Austin, Dallas, Houston, San Antonio)
- Investigates and prosecutes disciplinary matters within each region

Commission for Lawyer Discipline

- Standing committee of State Bar of Texas
- Oversees Chief Disciplinary Counsel (CDC)
- 12 members:
  - 6 attorneys appointed by President of the State Bar
  - 6 public members appointed by the Supreme Court of Texas

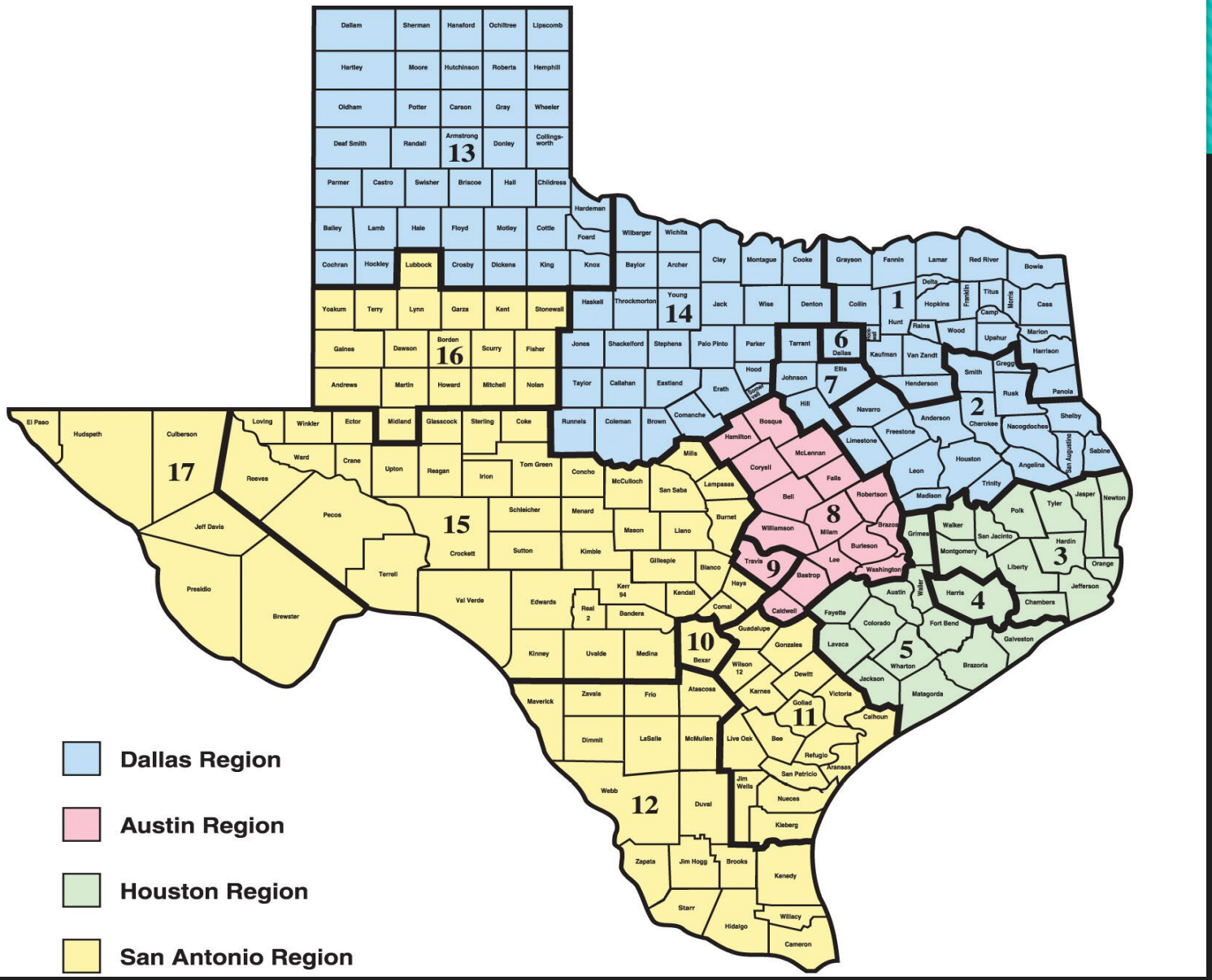
Grievance Committees

- Volunteer members
  - 2/3 Attorneys
  - 1/3 Public members
- State geographically divided into 17 disciplinary districts which mirror the Bar Districts
- Nominated by director from that district and appointed by SBOT President

District Courts

- Disciplinary cases
- Reinstatements (disbarments, resignations, disability suspension)
- Interim suspensions
- Assumptions of practice
- Revocations from district court judgments

Regions and Districts



CDC Stats

	19-20*	18-19	17-18	16-17
Grievances Filed	7,505	8,015	7,640	7,559
Classified as complaints	2,202	2,315	2,357	2,125
Dismissed as inquiries	5,123	5,561	5,096	5,243
Elections	**238**	**364**	**588**	**582**
Total number of complaints resolved with discipline	**497**	**589**	**490**	**545**
Total number of disciplines (final sanctions):	**402**	**414**	**332**	**342**
Disbarments	20	14	21	20
Resignations	9	17	23	28
Suspensions	142	152	116	126
Public Reprimands	39	32	25	30
Private Reprimands	106	124	70	89
Grievance Referral Program	86	75	77	49

Top practice areas for grievances

- Criminal
- Civil
- Personal Injury
- Immigration
- Probate

Grievance Process

- Process begins with filing of a grievance with the CDC
- No privity required between Complainant and Respondent (any party can complain against any Texas lawyer)
- The CDC can also initiate a grievance

Different Types of Grievances

Inquiry: Assuming that grievance is true, it still does not allege Professional Misconduct and is dismissed with notice to Complainant and Respondent. Accounts for about 70% of all grievances received.

Discretionary Referral: determined to involve minor misconduct and is appropriate for referral to the Client Attorney Assistance Program ("CAAP")

Complaint: Grievance states allegation of Professional Misconduct. **Notice and copy of Complaint are sent to Respondent advising him or her to respond within 30 days from receipt.**

Complaint to the CDC office

- A "flunked" discretionary referral or a straight grievance
- Send Attorney a copy of grievance with notice to C; **30 days to respond**
- **60 days** for investigation
  1. **Summary Disposition Panel (SDP)**
  2. **Investigatory Hearing**
  3. **Election & Hearing (Evidentiary Panel or in DC)**

RESPOND RESPOND RESPOND!

- Violation of Rule 8.04(a)(8)
- One side of story

No Just Cause: Summary Disposition Panel Hearing

- The CDC presents Complaint to Summary Disposition Panel (SDP)
- Quorum requirements: at least 4 panel members present. At least one member must be a public member
- The SDP determines whether Complaint should be dismissed or should proceed
- A tie vote results in dismissal
- No appeal from decision
- Venue is in county of alleged misconduct

Investigatory Hearings

- Nonadversarial proceeding
- Witnesses may be subpoenaed
- Confidential, record may be used in disciplinary matter
- May result in dismissal or negotiated sanction – if neither, case will proceed same as just cause determination
- Venue is in county of alleged misconduct

Notification of Complaint & Election

- If Just Cause is found, or if SDP votes to proceed, or if the IVH does not result in a negotiated sanction, the CDC notifies Respondent in writing.
- Respondent must elect to have Complaint heard in district court or by Evidentiary Panel **within 20 days** from receipt of notice.
- If Respondent fails to elect, Complaint proceeds before Evidentiary Panel.
  - Evidentiary Panel: confidential; private reprimand
  - District Court: public proceeding; NO private reprimand

Evidentiary Panel: Venue

- County of Respondent's principal place of practice
- If no principal place of practice in Texas, county of Respondent's residence
- If no residence or principal place of practice in Texas, county where Professional Misconduct occurred
- In all other instances, Travis County

Evidentiary Panel: Parties

- Commission for Lawyer Discipline (represented by CDC)
- Respondent

* Complainant is a potential witness but not a party

Evidentiary Petition & Answer

- Evidentiary Petition be filed **within 60 days** from receipt of Respondent's election or election deadline.
- Respondent must file a responsive pleading specifically admitting or denying each allegation
  - Must be filed no later than 5:00 p.m. on the first Monday following the expiration of **20 days** after service.

Discovery

- Requests for Disclosure
- Depositions
- Interrogatories
- Requests for Production
- Requests for Admissions
- Subpoenas

Evidentiary Hearing: Procedure

- Panel chair's opening remarks
- Commission's opening statement (optional)
- Respondent's opening statement (optional or may reserve)
- Commission's case-in-chief
- Commission rests
- Respondent presents defense
- Respondent rests
- Commission's rebuttal
- Commission's closing statement
- Respondent's closing statement
- Commission's rebuttal
- Panel deliberations (private)
- Decision announced on record

Evidentiary Panel: Record & Confidentiality

- Record: All evidentiary proceedings are recorded by a court reporter.
- Commission must show allegations by a preponderance of the evidence
- All evidentiary proceedings are confidential
  - If the panel imposes any sanction other than a private reprimand, judgment is a public record when signed

Evidentiary Panel: Decisions

- The Evidentiary Panel decides all questions of fact and law and all matters related to sanctions
- Generally, all decisions must be made by majority vote of a quorum of the Evidentiary Panel
- A tie vote is in favor of Respondent

Available Sanctions

- Private reprimand
- Public reprimand
- Probation of suspension (Respondent may practice law with conditions)
- Partially-probated suspension (combination of active and probated suspension)
- Active suspension (Respondent cannot practice during this term)
- Disbarment (loss of license to practice law)

Sanction Guidelines

- General Factors to consider
  - duty violated
  - Respondent's level of culpability
  - potential or actual injury caused
  - existence of aggravating or mitigating factors.
- Guidelines for when a particular sanction is appropriate for particular rule violations (e.g. Neglect – disbarment is generally appropriate when Respondent abandons practice and causes serious injury to client.)

Additional Sanctions/Terms and Conditions of Probation

- "Sanction" may also include:
  - restitution to client(s) or to Client Security Fund
  - reasonable attorneys' fees and all direct expenses associated with the proceedings
- Judgment may also include the following terms of probation if the evidence supports inclusion:
  - Additional hours of CLE courses
  - Law Practice Management Consultation
  - Rehabilitative Monitor
  - Psychological Assessment and Compliance Reports
  - Law Practice Monitor
  - Random Drug Screens
  - Trust Account Reporting or Audit

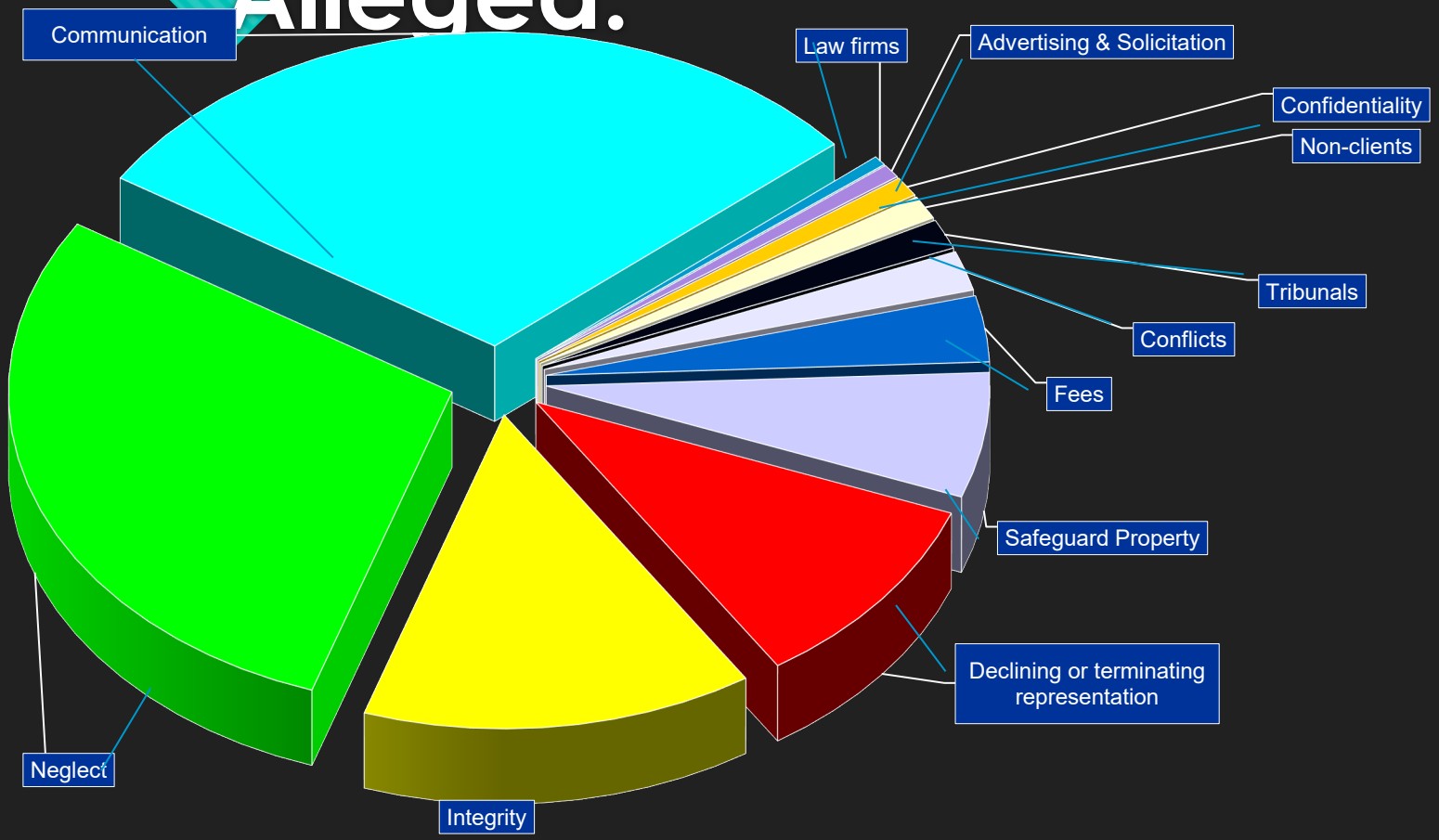
Grievance Referral Program

- Diversion program for minor misconduct cases
- Eligibility –
  - No discipline within prior 3 years
  - No discipline for similar conduct within prior 5 years
  - Conduct does not involve misappropriation of funds; dishonesty, fraud, misrepresentation; substantial harm to client/complainant; crime
  - Respondent cooperative attitude
  - Likely to benefit Respondent

Common rule violations

- Communication
- Neglect
- Terminating representation
- Practicing while suspended
- Failure to respond to the complaint
- Safekeeping property
- Trust account violations

Rule Violations Alleged:



Communication:

TDRPC 1.03(a): A lawyer shall keep a client reasonably informed about the status of a matter & promptly comply with reasonable requests for information.

TDRPC 1.03(b): A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Neglect:

TDRPC 1.01(b)(1): A lawyer shall not neglect a legal matter entrusted to the lawyer.

TDRPC 1.01(b)(2): A lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client or clients.

* "Neglect": inattentiveness involving a conscious disregard for the responsibilities owed to the client or clients

Terminating Representation:

TDRPC 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 payments of fee that has not been earned.

Failure to Respond to Complaint:

TDRPC 8.04(a)(8): A lawyer shall not fail to timely furnish a response or other required information to the CDC unless he or she in good faith timely asserts a privilege or other legal ground.

Practicing While Suspended:

TDRPC 8.04(a)(11): A lawyer shall not engage in the practice of law when the lawyer is on inactive status or when the lawyer's right to practice has been suspended or terminated.

*** This includes a situation where a lawyer has been administratively suspended for failing to pay required fees or failing to comply with MCLE requirements.**

Why Lawyers Lose Their Licenses

- **1. Criminal and amoral behavior**
- **2. Impaired Lawyers**
  - Center for Professional & Ethics stated that 20% of lawyers will be impaired at some point in their practice
    - 12% of all attorneys are suffering from clinical depression
- **3. Newly licensed lawyers without tools**
  - Get a mentor
  - Money screws with your ethics; large student debt

Top Nine Tips

- Use a tracking system for deadlines and monitor it
- Watch the money
- Watch your caseload
- Give good training to non-lawyers in your office
- Keep open communications with your staff
- Put it in writing
- Communicate with your client
  - Yourself when possible
  - In writing when possible
  - Especially if it is bad news
- Contact a mentor
- Call the ethics hotline

Advertising Review Committee ("ARC")

- Studies attorney advertising issues and attorney compliance with lawyer advertising rules
- Reviews all public media advertising and written solicitation communications submitted for review as required by ethics rules
- Reviewed 3,204 lawyer advertisements in 2019-2020

Texas Lawyers' Assistance Program ("TLAP")

- Provides confidential help for lawyers, law students, judges suffering with substance use disorders and/or mental health issues
- 24-HR hotline (call or text): (800) 343-TLAP (8527)
- Financial assistance for mental health services for qualifying lawyers
- TLAP videos available on State Bar website
- Free weekly webinars during COVID-19 pandemic

Professional Ethics Committee ("PEC")

- 9 Attorney member Committee
- Appointed by Supreme Court of Texas
- Express opinions on the propriety of questions of professional conduct
- Opinions published in the Texas Bar Journal
- CDC provides administrative and liaison support

Ethics Helpline

- Texas attorneys receive non-binding, informal ethics guidance
- Toll-free number: (800) 532-3947
- Ellen Pitluk and Rita Alister
  - Approximately 5,400 calls handled in 2019-2020
  - 96% of calls returned within 24 hours
  - Provides “life-line” to attorneys during pandemic

CDC Contact Information

- The Princeton
  14651 Dallas Parkway, Suite 925
  Dallas, Texas 75254
- Phone #: (972) 383-2900
- Rachel.craig@texasbar.com