

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 13-**9150**

APPROVAL OF AMENDMENTS TO TEXAS RULES OF DISCIPLINARY PROCEDURE AND INTERNAL OPERATING PROCEDURES OF THE COMMISSION FOR LAWYER DISCIPLINE


ORDERED that:

1. In accordance with the Act of June 14, 2013, 83rd Leg., R.S. (SB 825), the Supreme Court of Texas amends Rules of Disciplinary Procedure 1.06 and 15.06 and the Commission for Lawyer Discipline's Internal Operating Procedure 13 as follows, effective November 1, 2013.
2. The Clerk is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each elected member of the Legislature; and
 - d. submit a copy of the Order for publication in the *Texas Register*.

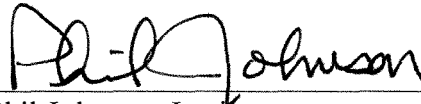
Dated: October 14, 2013.



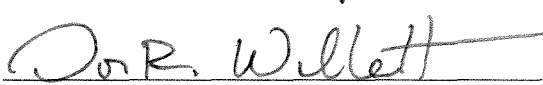
Nathan L. Hecht, Chief Justice



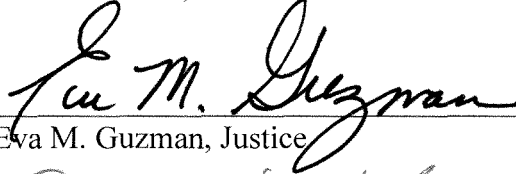
Paul W. Green, Justice



Phil Johnson, Justice



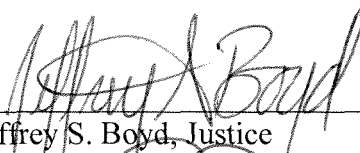
Don R. Willett, Justice



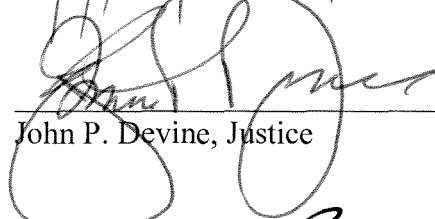
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

Amendments to Rule 1.06, Texas Rules of Disciplinary Procedure

1.06. Definitions

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V. "Penal Institution" has the meaning assigned by Article 62.001, Code of Criminal Procedure.

W. "Professional Misconduct" includes:

1. Acts or omissions by an attorney, individually or in concert with another person or persons, that violate one or more of the Texas Disciplinary Rules of Professional Conduct.
2. Attorney conduct that occurs in another state or in the District of Columbia and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct.
3. Violation of any disciplinary or disability order or judgment.
4. Engaging in conduct that constitutes barratry as defined by the law of this state.
5. Failure to comply with Rule 13.01 of these rules relating to notification of an attorney's cessation of practice.
6. Engaging in the practice of law either during a period of suspension or when on inactive status.
7. Conviction of a Serious Crime, or being placed on probation for a Serious Crime with or without an adjudication of guilt.
8. Conviction of an Intentional Crime, or being placed on probation for an Intentional Crime with or without an adjudication of guilt.

X. "Reasonable Attorneys' Fees," for purposes of these rules only, means a reasonable fee for a competent private attorney, under the circumstances. Relevant factors that may be considered in determining the reasonableness of a fee include but are not limited to the following:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. The fee customarily charged in the locality for similar legal services;
3. The amount involved and the results obtained;
4. The time limitations imposed by the circumstances; and
5. The experience, reputation, and ability of the lawyer or lawyers performing the services.

Y. “Respondent” means any attorney who is the subject of a Grievance, Complaint, Disciplinary Proceeding, or Disciplinary Action.

Z. “Sanction” means any of the following:

1. Disbarment.
2. Resignation in lieu of discipline.
3. Indefinite Disability Suspension.
4. Suspension for a term certain.
5. Probation of suspension, which probation may be concurrent with the period of suspension, upon such reasonable terms as are appropriate under the circumstances.
6. Interim suspension.
7. Public reprimand.
8. Private reprimand.

The term “Sanction” may include the following additional ancillary requirements.

- a. Restitution (which may include repayment to the Client Security Fund of the State Bar of any payments made by reason of Respondent’s Professional Misconduct); and
- b. Payment of Reasonable Attorneys’ Fees and all direct expenses associated with the proceedings.

AA. “Serious Crime” means barratry; and felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.

BB. “State Bar” means the State Bar of Texas.

CC. “Summary Disposition Panel” means a panel of the Committee that determines whether a Complaint should proceed or should be dismissed based upon the absence of evidence to support a finding of Just Cause after a reasonable investigation by the Chief Disciplinary Counsel of the allegations in the Grievance.

DD. “Wrongfully Imprisoned Person” has the meaning assigned by Section 501.101, Government Code.

Amendments to Rule 15.06, Texas Rules of Disciplinary Procedure

15.06. Limitations; Rules and Exceptions

A. *General Rule:* No attorney licensed to practice law in Texas may be disciplined for Professional Misconduct that occurred occurring more than four years before the date on which a Grievance alleging the time when the allegation of Professional Misconduct is received by the brought to the attention of the Office of Chief Disciplinary Counsel, except in cases in which disbarment or suspension is compulsory.

B. *Exception: Compulsory Discipline:* The general rule does not apply to a Disciplinary Action seeking compulsory discipline under Part VIII.

C. *Exception: Alleged Violation of the Disclosure Rule:* A prosecutor may be disciplined for a violation of Rule 3.09(d), Texas Disciplinary Rules of Professional Conduct, that resulted in the wrongful imprisonment of a person if the Grievance alleging the violation is received by the Chief Disciplinary Counsel within four years after the date on which the Wrongfully Imprisoned Person was released from a Penal Institution.

D. *Effect of Fraudulent Concealment:* If the doctrine of fraudulent concealment is successfully invoked, the time periods stated in this rule do not begin to run until the Complainant discovered, or in the exercise of reasonable diligence should have discovered, the Professional Misconduct. Limitations will not begin to run where fraud or concealment is involved until such Professional Misconduct is discovered or should have been discovered in the exercise of reasonable diligence by the Complainant.

Amendments to Internal Operation Procedure 13, Commission for Lawyer Discipline

13. LIMITATIONS ON THE USE OF PRIVATE REPRIMANDS. In accordance with Section 81.072(11), Texas Government Code, the Commission adopts the following rules restricting the use of private reprimands by district grievance committees. Private reprimands shall not be utilized if:

- A. A private reprimand has been imposed upon the Respondent within the preceding five (5) year period for a violation of the same disciplinary rule; or

- B. The Respondent has previously received two (2) or more private reprimands, whether or not for violations of the same disciplinary rule, within the preceding ten (10) years; or
- C. The misconduct includes theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
- D. The misconduct has resulted in substantial injury to the client, the public, the legal system or the profession; or
- E. There is likelihood of future misconduct by Respondent; or
- F. The Respondent's misconduct was an intentional violation of the Texas Disciplinary Rules of Professional Conduct or, if applicable, the Texas Code of Professional Conduct; or
- G. A Disciplinary Action has been filed as a result of such misconduct; or
- H. The misconduct involves the failure of a prosecutor to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense.