

Misc. Docket No. 93-0018

ORDER
of the
Supreme Court of Texas

The Supreme Court of Texas hereby promulgates the attached

**POLICIES AND PROCEDURES FOR FILING AN APPEAL FROM A
"CLASSIFICATION" TO THE BOARD OF DISCIPLINARY APPEALS;**

the attached

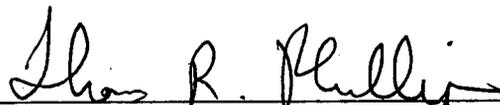
**ETHICAL CONSIDERATIONS
FOR THE BOARD OF DISCIPLINARY APPEALS;**

and the attached

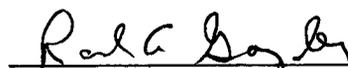
**RULES OF PROCEDURE FOR COMPULSORY DISCIPLINE MATTERS
BEFORE THE BOARD OF DISCIPLINARY APPEALS.**

These Rules, Policies and Procedures shall be effective immediately.

In Chambers, this 30th day of October, 1992.



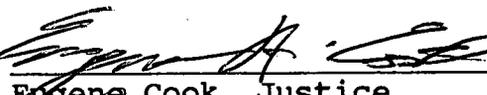
Thomas R. Phillips, Chief Justice



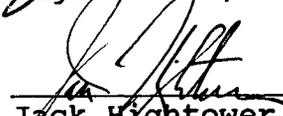
Raul A. Gonzalez, Justice



Oscar H. Mauzy, Justice



Eugene Cook, Justice



Jack Hightower, Justice

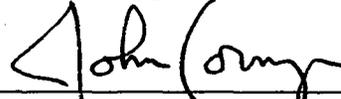


Nathan L. Hecht, Justice

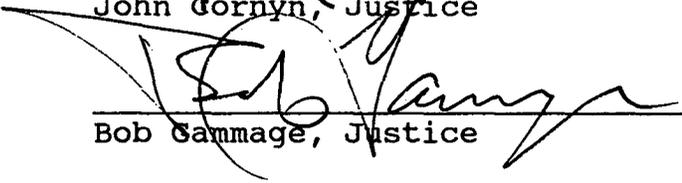
Misc. Docket No. 93-0078



Lloyd Doggett, Justice



John Cornyn, Justice



Bob Gammage, Justice

POLICIES AND PROCEDURES FILING AN APPEAL FROM A
"CLASSIFICATION" TO THE BOARD OF DISCIPLINARY APPEALS

I. Definitions:

- A. Bar
The State Bar of Texas.
- B. Board of Disciplinary Appeals ("Board")
The nine lawyers appointed by the Texas Supreme Court to hear appeals of disciplinary matters.
- C. Board Panel ("Panel")
Any three-member grouping of the Board.
- D. Classification
The determination by the Counsel, as to whether the written statement is to be considered a "complaint" or an inquiry.
- E. Classification Notification
The letter sent by the Counsel notifying Complainant of the classification decision of the written statement.
- F. Complaint
The formal allegations made by the Complainant, that if true, would constitute professional misconduct.
- G. Complainant
The person or persons alleging wrongful conduct.
- H. Chief Disciplinary Counsel ("Counsel")
The Office of the General Counsel for the Bar.
- I. Respondent
The attorney at law alleged to have committed the misconduct.

II. Classification Notification

- A. To Complainant
 - 1. The Counsel shall notify Complainant of the disposition of the written statement.
 - 2. If the matter is not processed as a Complaint, Complainant shall be allowed to amend the written statement and refile or appeal to the Board.
 - 3. To effectuate an appeal Counsel shall send Complainant an Appeal Notice form with the Classification Notification. The Appeal Notice form shall include, but is not limited to, the

Docket # of the matter and address for mailing the Appeal Notice.

B. To Respondent

1. The Counsel shall notify Respondent of the disposition of the written statement.
2. If the matter is certified as a Complaint, Respondent shall be allowed to appeal to the Board.
3. To effectuate an appeal Counsel shall send Respondent an Appeal Notice form with the Classification Notification. The Appeal Notice form shall include, but is not limited to, the Docket # of the matter and address for mailing the Appeal Notice.

III. Notice of Disposition of Appeal

- A. The office of the Board shall provide Complainant and Respondent written notice of the decision on the appeal. ("Disposition of Appeal Notice").
- B. Such notice is to be mailed to the address provided in the Appeal Notice.

**ETHICAL CONSIDERATIONS
FOR THE BOARD OF DISCIPLINARY APPEALS**

1. Conflicts of Interest

No member of the Board of Disciplinary Appeals shall represent or counsel a respondent attorney with respect to any disciplinary matter. No member of the Board of Disciplinary Appeals shall testify voluntarily or offer to testify voluntarily on behalf of a respondent in any disciplinary matter.

If subpoenaed or otherwise compelled by law to testify in any proceeding, members of the Board of Disciplinary Appeals shall not disclose confidential matter discussed in executive session concerning any disciplinary case unless required to do so by a court of competent jurisdiction. If subpoenaed or otherwise compelled to attend any proceeding, including depositions, a member of the Board of Disciplinary Appeals shall promptly notify the Chairperson of the Board and the Chief Disciplinary Counsel.

2. Recusal of Board Members

Members of the Board of Disciplinary Appeals shall recuse themselves from any discussion and voting in a disciplinary matter in which the member:

- a. represents or has represented either the complainant or respondent attorney in any legal matter;
- b. is related by blood, adoption, or marriage as an ancestor or descendant, brother, sister, aunt, uncle, or a son or daughter of a brother or sister of the whole or half blood or a first-cousin;
- c. has advised or assisted the respondent attorney in that disciplinary matter or any other related disciplinary matter; or
- d. has personal knowledge of the material facts in a disciplinary matter or been retained or consulted as an expert witness in that matter.

Members of the Board of Disciplinary Appeals may recuse themselves from any discussion and voting in a disciplinary matter in which the member knows of any other reason why he or she should not participate in deliberations or voting with respect to the disciplinary matter.

**RULES OF PROCEDURE FOR COMPULSORY DISCIPLINE MATTERS
BEFORE THE BOARD OF DISCIPLINARY APPEALS**

I. Initiation of Proceeding:

Pursuant to Texas Rule of Disciplinary Procedure 8.03, the State Bar of Texas shall file a petition with the Board of Disciplinary Appeals and serve the Respondent Attorney in accordance with the Texas Rules of Civil Procedure, and such notice shall include the date and place of hearing which shall not be fewer than 20 days from the service of petition. Within twenty (20) days of service of the petition, the Respondent shall file an answer setting forth:

- (a) any factual dispute as to whether the Respondent is the same person as the party adjudicated guilty or who received probation with or without an adjudication of guilt;
- (b) any factual dispute as to the validity of the conviction;
- (c) any legal argument that the offense for which the Respondent has been convicted is not an Intentional Crime as defined in Texas Rules of Disciplinary Procedure 1.06(O).

II. Hearing

The hearing shall be limited to the introduction of evidence contesting the issue of identity or challenging the validity of the conviction. Legal argument shall be limited to whether the offense for which the Respondent has been convicted is an Intentional Crime as defined in Texas Rules of Disciplinary Procedure 1.06(O).