

# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 18-9085

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## FINAL APPROVAL OF AMENDMENTS TO THE TEXAS RULES OF DISCIPLINARY PROCEDURE

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**ORDERED** that:

1. On March 1, 2018, in Miscellaneous Docket No. 18-9031, the Court preliminarily approved amendments to the Texas Rules of Disciplinary Procedure required by the Act of May 28, 2017, 85th Leg., R.S., ch. 531 (SB 302), and invited public comment.
2. The Court has reviewed all comments received and gives final approval to the amendments in this order.
3. Changes to the draft amendments in Miscellaneous Docket No. 18-9031 are as follows:
  - a. Rule 2.12 has been reorganized and stylistic changes have been made throughout the rule.
  - b. Rule 2.12(B) has been revised to authorize an investigatory subpoena for information or testimony “that relates directly to a specific allegation of attorney misconduct”. The revision tracks the language of Section 81.080(a), Government Code.
  - c. Rule 2.12(D) has been revised to require the chair of the District Grievance Committee to authorize an investigatory subpoena—rather than the chair of an Investigatory Panel—even if an investigatory hearing has already been set. This revision conforms to Section 81.080(a), Government Code. Paragraph (D) has also been revised to state that objections must be made in good faith.
  - d. Rule 2.12(E) has been revised to state that if the Chief Disciplinary Counsel pursues enforcement of a subpoena in district court:

- the Respondent may raise any good faith objection to the subpoena;
  - if the district court finds that a Respondent's objection or noncompliance is in bad faith, the court may award costs and attorney fees to the Chief Disciplinary Counsel;
  - the district court's order is not appealable; and
  - the Chief Disciplinary Counsel must not consider a Respondent's good faith objection to an investigatory subpoena as grounds for Just Cause.
- e. The introductory paragraph to Rule 2.17 has been revised to clarify that an Investigatory Panel member may not be assigned to an Evidentiary Panel for the same case.
- f. Stylistic changes have been made to Rule 2.17(H) to conform to analogous language in Rule 2.12.
- g. Former Rule 3.10 (Imposition of Sanctions) has been deleted because its substance is being replaced by Part XV. The rest of Part III has been renumbered.
- h. Typos have been corrected.
4. The amendments apply to a grievance filed on or after June 1, 2018, regardless of when the conduct that is the subject of the grievance occurred. A grievance filed before June 1, 2018 will be governed by the rules in effect at that time.
5. 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*.

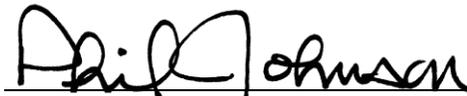
Dated: June 21, 2018.



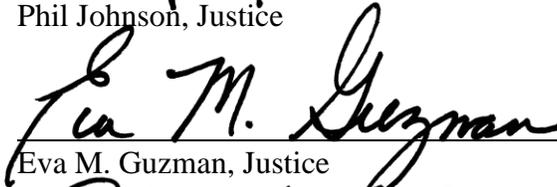
Nathan L. Hecht, Chief Justice



Paul W. Green, Justice



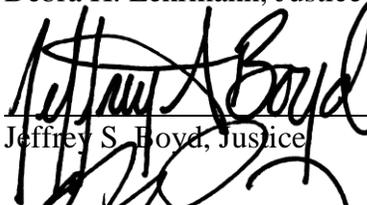
Phil Johnson, Justice



Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



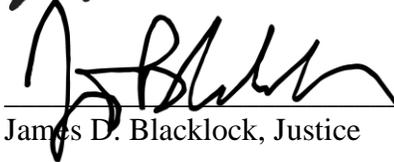
Jeffrey S. Boyd, Justice



John F. Devine, Justice



Jeffrey V. Brown, Justice



James D. Blacklock, Justice

# TEXAS RULES OF DISCIPLINARY PROCEDURE

## PART I. GENERAL RULES

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### 1.06. Definitions:

A. “Address” means the registered mailing address or preferred email address provided to the State Bar by the Respondent pursuant to Article III of the State Bar Rules. ~~attorney who is the subject of the Grievance, as that address is shown on the membership rolls maintained by the State Bar on behalf of the Clerk of the Supreme Court at the time of receipt of the Grievance by the Chief Disciplinary Counsel.~~

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L. “Disciplinary Proceedings” includes the processing of a Grievance, the investigation and processing of an Inquiry or Complaint, the proceeding before an Investigatory Panel, presentation of a Complaint before a Summary Disposition Panel, and the proceeding before an Evidentiary Panel.

M. “Discretionary Referral” means a Grievance received by the Office of Chief Disciplinary Counsel that has been determined upon initial classification to involve minor misconduct and is appropriate for referral to the State Bar’s Client Attorney Assistance Program.

N. M. “District” means disciplinary district.

O. N. “Evidentiary Hearing” means an adjudicatory proceeding before a panel of a grievance committee.

P. O. “Evidentiary Panel” means a panel of the District Grievance Committee performing an adjudicatory function other than that of a Summary Disposition Panel or an Investigatory Panel with regard to a Disciplinary Proceeding pending before the District Grievance Committee of which the Evidentiary Panel is a subcommittee.

Q. P. “Evidentiary Petition” means a pleading that satisfies the requirements of Rule 2.17.

Q. ~~“General Counsel” means the General Counsel of the State Bar of Texas and any and all of his or her assistants.~~

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S. “Injury” in Part XV of these Rules is harm to a client, the public, the legal system, or the profession which results from a Respondent’s misconduct. The level of

injury can range from “serious” injury to “little or no” injury; a reference to “injury” alone indicates any level of injury greater than “little or no” injury.

- T. S. “Inquiry” means any written matter concerning attorney conduct received by the Office of the Chief Disciplinary Counsel that, even if true, does not allege Professional Misconduct or Disability.
- U. “Intent” in Part XV of these Rules is the conscious objective or purpose to accomplish a particular result. A person’s intent may be inferred from circumstances.
- V. T. “Intentional Crime” means (1) any Serious Crime that requires proof of knowledge or intent as an essential element or (2) any crime involving misapplication of money or other property held as a fiduciary.
- W. “Investigatory Panel” means a panel of the Committee that conducts a nonadversarial proceeding during the investigation of the Complaint by the Chief Disciplinary Counsel.
- X. “Knowledge” in Part XV of these Rules is the conscious awareness of the nature of attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result. A person’s knowledge may be inferred from circumstances.
- Y. “Negligence” in Part XV of these Rules, is the failure to exercise the care that a reasonably prudent and competent lawyer would exercise in like circumstances.
- Z. U. “Just Cause” means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that an attorney either has committed an act or acts of Professional Misconduct requiring that a Sanction be imposed, or suffers from a Disability that requires either suspension as an attorney licensed to practice law in the State of Texas or probation.
- AA. V. “Penal Institution” has the meaning assigned by Article 62.001, Code of Criminal Procedure.
- BB. “Potential injury” in Part XV of these Rules is the harm to a client, the public, the legal system or the profession that is reasonably foreseeable at the time of the Respondent’s misconduct, and which, but for some intervening factor or event, would probably have resulted from the Respondent’s misconduct.
- CC. 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.

DD. 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.

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

FF. 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.

GG. AA. “Serious Crime” means barratry; any 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.

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

II. 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.

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

## **PART II. THE DISTRICT GRIEVANCE COMMITTEES**

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**2.06. Assignment of Committee Members:** Each member of a Committee shall act through panels assigned by the chair of the Committee for investigatory hearings, summary disposition dockets, and evidentiary hearings. Promptly after assignment, notice must be provided to the Respondent ~~by United States certified mail, return receipt requested,~~ of the names and addresses of the panel members assigned to each Complaint. A member is disqualified or is subject to recusal as a panel member for an evidentiary hearing if a district judge would, under similar circumstances, be disqualified or recused. If a member is disqualified or recused, another member shall be appointed by the Committee chair. No peremptory challenges of a Committee member are allowed. Any alleged grounds for disqualification or recusal of a panel member are conclusively waived if not brought to the attention of the panel within ten days after receipt of notification of the names and addresses of members of the panel; however, grounds for disqualification or recusal not reasonably discoverable within the ten day period may be asserted within ten days after they were discovered or in the exercise of reasonable diligence should have been discovered.

**2.07. Duties of Committees:** Committees shall act through panels, as assigned by the Committee chairs, to conduct investigatory hearings, summary disposition dockets, and evidentiary hearings. No panel may consist of more than one-half of all members of the Committee or fewer than three members. If a member of a panel is disqualified, recused or otherwise unable to serve, the chair shall appoint a replacement. Panels must be composed of two attorney members for each public member. A quorum must include at least one public member for every two attorney members present and consists of a majority of the membership of the panel, and business shall be conducted upon majority vote of those members present, a quorum being had. In matters in which evidence is taken, no member may vote unless that member has heard or reviewed all the evidence. It shall be conclusively presumed, however, not subject to discovery or challenge in any subsequent proceeding, that every member casting a vote has heard or reviewed all the evidence. No member, attorney or public, may be appointed by the chair to an ~~for both the Summary Disposition docket and the~~ Evidentiary Panel pertaining to the same disciplinary matter that the member considered at either an investigatory hearing or summary disposition docket. Any tie vote is a vote in favor of the position of the Respondent.

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**2.10. Classification of Grievances ~~Inquiries and Complaints:~~** The Chief Disciplinary Counsel shall within thirty days examine each Grievance received to determine whether it constitutes an Inquiry, or a Complaint, or a Discretionary Referral.

**A.** If the Grievance is determined to constitute an Inquiry, the Chief Disciplinary Counsel shall notify the Complainant and Respondent of the dismissal. The Complainant may, within thirty days from notification of the dismissal, appeal the determination to the Board of Disciplinary Appeals. If the Board of Disciplinary Appeals affirms the classification as an Inquiry, the Complainant will be so

notified and may within twenty days amend the Grievance one time only by providing new or additional evidence. The Complainant may appeal a decision by the Chief Disciplinary Counsel to dismiss the amended Complaint as an Inquiry to the Board of Disciplinary Appeals. No further amendments or appeals will be accepted. ~~In all instances where a Grievance is dismissed as an Inquiry other than where the attorney is deceased or is not licensed to practice law in the State of Texas, the Chief Disciplinary Counsel shall refer the Inquiry to a voluntary mediation and dispute resolution procedure.~~

- B. If the Grievance is determined to constitute a Complaint, the Respondent shall be provided a copy of the Complaint with notice to respond, in writing, to the allegations of the Complaint. The notice shall advise the Respondent that the Chief Disciplinary Counsel may provide appropriate information, including the Respondent's response, to law enforcement agencies as permitted by Rule 6.08. The Respondent shall deliver the response to both the Office of the Chief Disciplinary Counsel and the Complainant within thirty days after receipt of the notice.
- C. If the Grievance is determined to be a Discretionary Referral, the Chief Disciplinary Counsel will notify the Complainant and the Respondent of the referral to the State Bar's Client Attorney Assistance Program (CAAP). No later than sixty days after the Grievance is referred, CAAP will notify the Chief Disciplinary Counsel of the outcome of the referral. The Chief Disciplinary Counsel must, within fifteen days of notification from CAAP, determine whether the Grievance should be dismissed as an Inquiry or proceed as a Complaint. The Chief Disciplinary Counsel and CAAP may share confidential information for all Grievances classified as Discretionary Referrals.

**2.11. Venue:** Venue of District Grievance Committee proceedings shall be in accordance with the following:

- A. Investigatory Panel Proceedings. Proceedings of an Investigatory Panel shall be conducted by a Panel for the county where the alleged Professional Misconduct occurred, in whole or in part. If the acts or omissions complained of occurred wholly outside the State of Texas, proceedings shall be conducted by a Panel for the county of Respondent's residence and, if Respondent has no residence in Texas, by a Panel for Travis County, Texas.
- B. Summary Disposition Panel Proceedings. Proceedings of a Summary Disposition Panel shall be conducted by a Panel for the county where the alleged Professional Misconduct occurred, in whole or in part. If the acts or omissions complained of occurred wholly outside the State of Texas, proceedings shall be conducted by a Panel for the county of Respondent's residence and, if Respondent has no residence in Texas, by a Panel for Travis County, Texas.
- C. Evidentiary Panel Proceedings. ~~Proceedings of~~ an Evidentiary Panel

~~proceeding, venue shall be conducted by a Panel for in the county where of~~  
Respondent's principal place of practice is maintained; or if the Respondent does not maintain a place of practice within the State of Texas, in the county of Respondent's residence; or if the Respondent maintains neither a residence nor a place of practice within the State of Texas, then in the county where the alleged Professional Misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas.

## **2.12. Investigation and Determination of Just Cause:**

~~No more than sixty days after the date by which the Respondent must file a written response to the Complaint as set forth in Rule 2.10, the Chief Disciplinary Counsel shall investigate the Complaint and determine whether there is Just Cause.—~~

- A. The Chief Disciplinary Counsel will investigate a Complaint to determine whether Just Cause exists.
1. *General Rule:* The Chief Disciplinary Counsel must make a Just Cause determination within 60 days of the date that the Respondent's response to the Complaint is due.
  2. *Exceptions:* The Just Cause determination date is extended to 60 days after the latest of:
    - a. the date of compliance specified in any investigatory subpoena issued by the Chief Disciplinary Counsel;
    - b. the date of any enforcement order issued by a district court under (E); or
    - c. the date that an investigatory hearing is completed.
- B. During the investigation, the Chief Disciplinary Counsel, with the Committee chair's approval, may issue a subpoena that relates directly to a specific allegation of attorney misconduct for the production of documents, electronically stored information, or tangible things or to compel the attendance of a witness, including the Respondent, at an investigatory hearing.
- C. A subpoena must notify the recipient of the time, date, and place of appearance or production and must contain a description of materials to be produced. A subpoena must be served on a witness personally or in accordance with Rule 21a, Texas Rules of Civil Procedure. Proof of service may be by certification of the server or by return receipt. A witness, other than the Respondent, who is commanded to appear at an investigatory hearing is entitled to the same fee and expense reimbursement as a witness commanded to appear in district court.
- D. Before the time specified for compliance, a person commanded to appear or make

production must present any objection to the chair of the Investigatory Panel, if an investigatory hearing has been set, or to the Committee chair, if an investigatory hearing has not been set. Objections must be made in good faith. If the chair overrules an objection in whole or in part, and the objecting party fails to comply with the chair's ruling, the Chief Disciplinary Counsel may seek to enforce the subpoena in district court under (E).

E. The Chief Disciplinary Counsel may seek enforcement of a subpoena in the district court of the county in which appearance or production is required. The person commanded to appear or make production may raise any good faith objection to the subpoena. If the district court finds that the person's noncompliance with or objection to a subpoena is in bad faith, then after notice and a hearing, the court may order the person to pay the Chief Disciplinary Counsel's reasonable and necessary costs and attorney fees. The district court's order is not appealable. The Chief Disciplinary Counsel must not consider a Respondent's good faith objection to an investigatory subpoena as grounds for Just Cause.

F. An investigatory hearing on a Complaint will be set before an Investigatory Panel and is a nonadversarial proceeding that may be conducted by teleconference. The chair of the Investigatory Panel may administer oaths and may set forth procedures for eliciting evidence, including witness testimony. Witness examination may be conducted by the Chief Disciplinary Counsel, the Respondent, or the Panel. An investigatory hearing is strictly confidential and any record may be released only for use in a disciplinary matter.

G. An investigatory hearing may result in a Sanction negotiated with the Respondent or in the Chief Disciplinary Counsel's dismissing the Complaint or finding Just Cause. The terms of a negotiated Sanction must be in a written judgment with findings of fact and conclusions of law. The judgment must be entered into the record by the chair of the Investigatory Panel and signed by the Chief Disciplinary Counsel and the Respondent.

**2.13. Summary Disposition Setting:** Upon investigation, if the Chief Disciplinary Counsel determines that Just Cause does not exist to proceed on the Complaint, the Chief Disciplinary Counsel shall place the Complaint on a Summary Disposition Panel docket, which may be conducted by teleconference. At the Summary Disposition Panel docket, the Chief Disciplinary Counsel will present the Complaint together with any information, documents, evidence, and argument deemed necessary and appropriate by the Chief Disciplinary Counsel, without the presence of the Complainant or Respondent. The Summary Disposition Panel shall determine whether the Complaint should be dismissed or should proceed. If the Summary Disposition Panel dismisses the Complaint, both the Complainant and Respondent will be so notified. There is no appeal from a determination by the Summary Disposition Panel that the Complaint should be dismissed or should proceed. All Complaints presented to the Summary Disposition Panel and not dismissed will proceed in accordance with Rule 2.14 and Rule 2.15 ~~be placed on the Hearing Docket.~~ The fact that a Complaint was placed on the Summary Disposition Panel Docket and not dismissed is wholly inadmissible for any purpose in the instant or any subsequent Disciplinary Proceeding or Disciplinary Action. ~~Files of dismissed Disciplinary~~

~~Proceedings will be retained for one hundred eighty days, after which time the files may be destroyed. No permanent record will be kept of Complaints dismissed except to the extent necessary for statistical reporting purposes. In all instances where a Complaint is dismissed by a Summary Disposition Panel other than where the attorney is deceased or is not licensed to practice law in the State of Texas, the Chief Disciplinary Counsel shall refer the Inquiry to a voluntary mediation and dispute resolution procedure.~~

**2.14. Proceeding Upon a Determination of Just Cause:** All rights characteristically reposed in a client by the common law of this State as to every Complaint not dismissed after an investigatory hearing, resolved through a negotiated judgment entered by an Investigatory Panel, or dismissed by the Summary Disposition Panel are vested in the Commission.

A. Client of Chief Disciplinary Counsel: The Commission is the client of the Chief Disciplinary Counsel for every Complaint not dismissed after an investigatory hearing, resolved through a negotiated judgment entered by an Investigatory Panel, or dismissed by the Summary Disposition Panel.

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D. Notification of Complaint: For each Complaint not dismissed after an investigatory hearing, resolved through a negotiated judgment entered by an Investigatory Panel, or dismissed by the Summary Disposition Panel, the Chief Disciplinary Counsel shall give the Respondent written notice of the acts and/or omissions engaged in by the Respondent and of the Texas Disciplinary Rules of Professional Conduct that the Chief Disciplinary Counsel contends are violated by the alleged acts and/or omissions. ~~Such notice shall be given by certified mail, return receipt requested, sent to the Respondent at the Address.~~

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**2.16. Confidentiality:**

A. All members and staff of the Office of Chief Disciplinary Counsel, Board of Disciplinary Appeals, Committees, and Commission shall maintain as confidential all Disciplinary Proceedings and associated records, except that:

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2. a negotiated judgment entered by an Investigatory Panel for any Sanction other than a private reprimand may be disclosed;

3. if the Evidentiary Panel finds that professional misconduct occurred and imposes any Sanction other than a private reprimand;

a. the Evidentiary Panel's final judgment is a public record from the

date the judgment is signed; and

- b. once all appeals, if any, have been exhausted and the judgment is final, the Office of Chief Disciplinary Counsel shall, upon request, disclose all documents, statements, and other information relating to the Disciplinary Proceeding that came to the attention of the Evidentiary Panel during the Disciplinary Proceeding;

43. the record in any appeal to the Board of Disciplinary Appeals from an Evidentiary Panel's final judgment, other than an appeal from a judgment of private reprimand, is a public record; and

54. facts and evidence that are discoverable elsewhere are not made confidential merely because they are discussed or introduced in the course of a Disciplinary Proceeding.

- B. The deliberations and voting of an Investigatory Panel or Evidentiary Panel are strictly confidential and not subject to discovery. No person is competent to testify as to such deliberations and voting.

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D. Files of dismissed Disciplinary Proceedings will be retained for one hundred eighty days, after which time the files may be destroyed. No permanent record will be kept of Complaints dismissed except to the extent necessary for statistical reporting purposes.

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**2.17 Evidentiary Hearings:** Within fifteen days of the earlier of the date of Chief Disciplinary Counsel's receipt of Respondent's election or the day following the expiration of Respondent's right to elect, the chair of a Committee having proper venue shall appoint an Evidentiary Panel to hear the Complaint. The Evidentiary Panel may not include any person who served on a Summary Disposition ~~Docket~~ or an Investigatory Panel that heard the Complaint and must have at least three members but ~~must have~~ no more than one-half as many members as on the Committee. Each Evidentiary Panel must have a ratio of two attorney members for every public member. Proceedings before an Evidentiary Panel of the Committee include:

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- H. Subpoena Power: the Commission or the Respondent may compel the attendance of witnesses, including the Respondent, and the production of ~~books, documents, papers, banking records~~ electronically stored information, or tangible, and other things by subpoena. The A subpoena must notify the witness of the time, date, and place of appearance or production; and must contain a description of the materials to be produced; be signed by the Evidentiary Panel chair; and be served personally or in accordance with Rule 21a, Texas Rules of Civil Procedure. ~~Subpoenas must be in writing and signed and~~

~~issued by the Evidentiary Panel chair. The party seeking the subpoena shall submit it in a proper form and is responsible for securing service. Proof of service may be by certification of the server or by return receipt. Any contest between the Commission and the Respondent about the materiality of the testimony or production sought by a subpoena shall will be determined by the Evidentiary Panel chair, and is subject to review. Subpoenas must be served on witnesses personally or in accordance with Rule 21a of the Texas Rules of Civil Procedure. Proof of service shall be by certification of the server or by the return receipt. The Commission or the Respondent may seek enforcement of a subpoena is enforceable by in the district court of the county in which the attendance or production is required. A witness, other than the Respondent, Witnesses shall be paid witness fees and mileage the same as for a district court who is commanded to appear at an Evidentiary Panel hearing is entitled to the same fee and expense reimbursement as a witness commanded to appear in district court.~~

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~~**2.18. Imposition of Sanctions:** The Evidentiary Panel may, in its discretion, conduct a separate hearing and receive evidence as to the appropriate Sanctions to be imposed. Indefinite Disability sanction is not an available Sanction in a hearing before an Evidentiary Panel. In determining the appropriate Sanctions, the Evidentiary Panel shall consider:-~~

- ~~A. — The nature and degree of the Professional Misconduct for which the Respondent is being sanctioned;~~
- ~~B. — The seriousness of and circumstances surrounding the Professional Misconduct;~~
- ~~C. — The loss or damage to clients;—~~
- ~~D. — The damage to the profession;~~
- ~~E. — The assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found;~~
- ~~F. — The profit to the attorney;—~~
- ~~G. — The avoidance of repetition;~~
- ~~H. — The deterrent effect on others;~~
- ~~I. — The maintenance of respect for the legal profession;~~
- ~~J. — The conduct of the Respondent during the course of the Disciplinary Proceeding;—~~

~~In addition, the Respondent's disciplinary record, including any private reprimands, is admissible on the appropriate Sanction to be imposed. Respondent's Disability may not~~

~~be considered in mitigation, unless Respondent demonstrates that he or she is successfully pursuing in good faith a program of recovery or appropriate course of treatment.~~

**2.182-19. Terms of Judgment:** In any judgment of disbarment or suspension that is not stayed, the Evidentiary Panel shall order the Respondent to surrender his or her law license and permanent State Bar card to the Chief Disciplinary Counsel for transmittal to the Clerk of the Supreme Court. In all judgments imposing disbarment or suspension, the Evidentiary Panel shall enjoin the Respondent from practicing law or from holding himself or herself out as an attorney eligible to practice law during the period of disbarment or suspension. In all judgments of disbarment, suspension, or reprimand, the Evidentiary Panel shall make all other orders as it finds appropriate, including probation of all or any portion of suspension.

**2.192-20. Restitution:** In all cases in which the proof establishes that the Respondent's misconduct involved the misappropriation of funds and the Respondent is disbarred or suspended, the panel's judgment must require the Respondent to make restitution during the period of suspension, or before any consideration of reinstatement from disbarment, and must further provide that its judgment of suspension shall remain in effect until evidence of satisfactory restitution is made by Respondent and verified by the Chief Disciplinary Counsel.

**2.202-21. Notice of Decision:** The Complainant, the Respondent, and the Commission must be notified in writing of the judgment of the Evidentiary Panel. The notice sent to the Respondent and the Commission must clearly state that any appeal of the judgment must be filed with the Board of Disciplinary Appeals within thirty days of the date of the notice. If the Evidentiary Panel finds that the Respondent committed professional misconduct, a copy of the Evidentiary Petition and the judgment shall be transmitted by the Office of the Chief Disciplinary Counsel to the Clerk of the Supreme Court. The Clerk of the Supreme Court shall make an appropriate notation on the Respondent's permanent record.

**2.212-22. Post Judgment Motions:** Any motion for new hearing or motion to modify the judgment must comport with the provisions of the applicable Texas Rules of Civil Procedure pertaining to motions for new trial or to motions to modify judgments.

**2.222-23. Probated Suspension--Revocation Procedure:** If all or any part of a suspension from the practice of law is probated under this Part II, the Board of Disciplinary Appeals is hereby granted jurisdiction for the full term of suspension, including any probationary period, to hear a motion to revoke probation. If the Chief Disciplinary Counsel files a motion to revoke probation, it shall be set for hearing within thirty days of service of the motion upon the Respondent. Service upon the Respondent shall be sufficient if made in accordance with Rule 21a of the Texas Rules of Civil Procedure. Upon proof, by a preponderance of the evidence, of a violation of probation, the same shall be revoked and the attorney suspended from the practice of law for the full term of suspension without credit for any probationary time served. The Board of Disciplinary Appeals' Order

revoking a probated suspension cannot be superseded or stayed.

**2.232-24. Appeals by Respondent or Commission:** The Respondent or Commission may appeal the judgment to the Board of Disciplinary Appeals. Such appeals must be on the record, determined under the standard of substantial evidence. Briefs may be filed as a matter of right. The time deadlines for such briefs shall be promulgated by the Board of Disciplinary Appeals. An appeal, if taken, is perfected when a written notice of appeal is filed with the Board of Disciplinary Appeals. The notice of appeal must reflect the intention of the Respondent or the Commission to appeal and identify the decision from which appeal is perfected. The notice of appeal must be filed within thirty days after the date of judgment, except that the notice of appeal must be filed within ninety days after the date of judgment if any party timely files a motion for new trial or a motion to modify the judgment.

**2.242-25. No Supersedeas:** An Evidentiary Panel's order of disbarment cannot be superseded or stayed. The Respondent may within thirty days from entry of judgment petition the Evidentiary Panel to stay a judgment of suspension. The Respondent carries the burden of proof by preponderance of the evidence to establish by competent evidence that the Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public. An order of suspension must be stayed during the pendency of any appeals therefrom if the Evidentiary Panel finds that the Respondent has met that burden of proof. An Evidentiary Panel may condition its stay upon reasonable terms, which may include, but are not limited to, the cessation of any practice found to constitute Professional Misconduct, or it may impose a requirement of an affirmative act such as an audit of a Respondent's client trust account.

**2.252-26. Disposition on Appeal:** The Board of Disciplinary Appeals may, in any appeal of the judgment of an Evidentiary Panel within its jurisdiction:

- A. Affirm the decision of the Evidentiary Panel, in whole or in part;
- B. Modify the Evidentiary Panel's judgment and affirm it as modified;
- C. Reverse the decision of the Evidentiary Panel, in whole or in part, and render the judgment that the Evidentiary Panel should have rendered;
- D. Reverse the Evidentiary Panel's judgment and remand the Disciplinary Proceeding for further proceeding by either the Evidentiary Panel or a statewide grievance committee panel composed of members selected from state bar districts other than the district from which the appeal was taken;
- E. Vacate the Evidentiary Panel's judgment and dismiss the case; or
- F. Dismiss the appeal.

**2.262-27. Remand to Statewide Grievance Committee Panel:** In determining whether a remand is heard by a statewide grievance committee panel, the Board of Disciplinary

Appeals must find that good cause was shown in the record on appeal. The Board of Disciplinary Appeals shall randomly select the members of the statewide grievance committee panel from grievance committees other than the district from which the appeal was taken. Six such members shall be selected, four of whom are attorneys and two of whom are public members. The statewide grievance committee panel, once selected, shall have all duties and responsibilities of the Evidentiary Panel for purposes of the remand.

**2.272-28. Appeal to Supreme Court of Texas:** An appeal from the decision of the Board of Disciplinary Appeals on an Evidentiary Proceeding is to the Supreme Court of Texas in accordance with Rule 7.11.

### PART III. TRIAL IN DISTRICT COURT

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**~~3.10. Imposition of Sanctions:~~** ~~The trial court may, in its discretion, conduct a separate hearing and receive evidence as to the appropriate Sanctions to be imposed. Private reprimand is not an available Sanction. Indefinite Disability suspension is not an available Sanction. In determining the appropriate Sanctions, the court shall consider:~~

- ~~A. The nature and degree of the Professional Misconduct for which the Respondent is being sanctioned;~~
- ~~B. The seriousness of and circumstances surrounding the Professional Misconduct;~~
- ~~C. The loss or damage to clients;~~
- ~~D. The damage to the profession;~~
- ~~E. The assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found;~~
- ~~F. The profit to the attorney;~~
- ~~G. The avoidance of repetition;~~
- ~~H. The deterrent effect on others;~~
- ~~I. The maintenance of respect for the legal profession;~~
- ~~J. The conduct of the Respondent during the course of the Committee action;~~
- ~~K. The trial of the case; and~~
- ~~L. Other relevant evidence concerning the Respondent's personal and professional~~

~~background.~~

~~In addition, the Respondent's disciplinary record, including any private reprimands, is admissible on the appropriate Sanction to be imposed. Respondent's Disability may not be considered in mitigation, unless Respondent demonstrates that he or she is successfully pursuing in good faith a program of recovery or appropriate course of treatment.~~

**3.10 3.11. Terms of Judgment:** In any judgment of disbarment or suspension that is not stayed, the court shall order the Respondent to surrender his or her law license and permanent State Bar card to Chief Disciplinary Counsel for transmittal to the Clerk of the Supreme Court. In all judgments imposing disbarment or suspension, the court shall enjoin the Respondent from practicing law or from holding himself or herself out as an attorney eligible to practice law during the period of disbarment or suspension. In all judgments of disbarment, suspension, or reprimand, the court shall make all other orders as it finds appropriate, including probation of all or any portion of suspension. The continuing jurisdiction of the trial court to enforce a judgment does not give a trial court authority to terminate or reduce a period of active or probated suspension previously ordered.

**3.11 3.12. Restitution:** In all cases in which the proof establishes that the Respondent's conduct involved misapplication of funds and the judgment is one disbaring or suspending the Respondent, the judgment must require the Respondent to make restitution during the period of suspension, or before any consideration of reinstatement from disbarment, and shall further provide that a judgment of suspension shall remain in effect until proof is made of complete restitution.

**3.12 3.13. Probation Suspension--Revocation Procedure:** If all or any part of a suspension from the practice of law is probated under this Part III, the court retains jurisdiction during the full term of suspension, including any probationary period, to hear a motion to revoke probation. If the Chief Disciplinary Counsel files a motion to revoke probation, it shall be set for hearing before the court without the aid of a jury within thirty days of service of the motion upon the Respondent. Service upon the Respondent shall be sufficient if made in accordance with Rule 21a of the Texas Rules of Civil Procedure. Upon proof by a preponderance of the evidence of a violation of probation, the same shall be revoked and the attorney suspended from the practice of law for the full term of suspension without credit for any probationary time served.

**3.13 3.14. No Supersedeas:** A district court judgment of disbarment or an order revoking probation of a suspension from the practice of law cannot be superseded or stayed. The Respondent may within thirty days from entry of judgment petition the court to stay a judgment of suspension. The Respondent carries the burden of proof by preponderance of the evidence to establish by competent evidence that the Respondent's continued practice of law does not pose a continuing threat to the welfare of Respondent's clients or to the public. A judgment of suspension shall be stayed during the pendency of any appeals therefrom if the district court finds that the Respondent has met that burden of proof. The district court may condition its stay upon reasonable terms, which may include, but are

not limited to, the cessation of any practice found to constitute Professional Misconduct, or it may impose a requirement of an affirmative act such as an audit of a Respondent's client trust account. There is no interlocutory appeal from a court's stay of a suspension, with or without conditions.

**3.14 3.15. Exemption from Cost and Appeal Bond:** No cost or appeal bond is required of the Chief Disciplinary Counsel or the Commission. In lieu thereof, when a cost or appeal bond would be otherwise required, a memorandum setting forth the exemption under this rule, when filed, suffices as a cost or appeal bond.

**3.15 3.16. Appeals:** A final judgment of the district court and any order revoking or refusing to revoke probation of a suspension from the practice of law may be appealed as in civil cases generally.

#### **PART IV. THE COMMISSION FOR LAWYER DISCIPLINE**

**4.06. Duties and Authority of the Commission:** The Commission has the following duties and responsibilities:

- A. To exercise, in lawyer disciplinary and disability proceedings only, all rights characteristically reposed in a client by the common law of this State for all Complaints not dismissed after an investigatory hearing, resolved through a negotiated judgment entered by an Investigatory Panel, or dismissed by the Summary Disposition Panel.

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#### **PART V. CHIEF DISCIPLINARY COUNSEL**

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**5.02. Duties:** In addition to the other disciplinary duties set forth in these rules, the Chief Disciplinary Counsel shall:

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- C. Investigate Complaints to ascertain whether Just Cause exists. The investigation may include the issuance of subpoenas, an investigatory hearing, and the entry of a negotiated judgment by an Investigatory Panel.

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#### **PART XV. GUIDELINES FOR IMPOSING SANCTIONS MISCELLANEOUS- PROVISIONS**

**15.01. Purpose and Nature of Sanctions**

A. Purpose of Lawyer Discipline Proceedings.

The purpose of lawyer discipline proceedings is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely to properly discharge their professional duties to clients, the public, the legal system, and the legal profession.

B. Purpose of These Guidelines.

These Guidelines are designed for use in Disciplinary Actions and Disciplinary Proceedings under Parts II and III of the Texas Rules of Disciplinary Procedure. The Guidelines set forth a comprehensive system for determining sanctions, permitting flexibility and creativity in assigning Sanctions in particular cases of lawyer misconduct. They are designed to promote: (1) consideration of all factors relevant to imposing the appropriate level of Sanction in an individual case; (2) consideration of the appropriate weight of such factors in light of the stated goals of lawyer discipline; and (3) consistency in the imposition of disciplinary Sanctions for the same or similar rule violations among the various district grievance committees and district courts that consider these matters. The Guidelines do not limit the authority of a district grievance committee or of a district judge to make a finding or issue a decision.

**15.02. General Factors to be Considered in Imposing Sanctions**

In imposing a sanction after a finding of Professional Misconduct, the disciplinary tribunal should consider the following factors:

- (a) the duty violated;
- (b) the Respondent's level of culpability;
- (c) the potential or actual injury caused by the Respondent's misconduct; and
- (d) the existence of aggravating or mitigating factors.

**15.03. Imposition of Sanctions**

In any Disciplinary Proceeding or Disciplinary Action where Professional Misconduct is found have occurred, the district grievance committee or district court may, in its discretion, conduct a separate hearing and receive evidence as to the appropriate Sanctions to be imposed.

**15.04. Violations of Duties Owed to Clients**

A. Lack of Diligence

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving neglect, frequent failure to carry out completely the obligations owed to a client, failure to communicate, failure to provide competent representation, or failure to abide by client decisions:

1. Disbarment is generally appropriate when:

- (a) a Respondent abandons the practice and causes serious or potentially serious injury to a client; or
- (b) a Respondent knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions and causes serious or potentially serious injury to a client; or
- (c) a Respondent engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions and causes serious or potentially serious injury to a client.

2. Suspension is generally appropriate when:

- (a) a Respondent knowingly fails to perform services for a client, fails to adequately communicate with a client, fails to provide competent representation, or fails to abide by client decisions and causes injury or potential injury to a client, or
- (b) a Respondent engages in a pattern of neglect with respect to client matters, inadequate client communications, lack of competent representation, or failure to abide by client decisions and causes injury or potential injury to a client.

3. Public reprimand is generally appropriate when a Respondent does not act with reasonable diligence in representing a client, communicating with a client, providing competent representation, or abiding by client decisions and causes injury or potential injury to a client.

4. Private reprimand is generally appropriate when a Respondent does not act with reasonable diligence in representing a client, communicating with a client, providing competent representation or abiding by client decisions and causes little or no actual or potential injury to a client.

B. Failure to Preserve the Client's Property

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving the failure to preserve client property, including the failure to surrender papers and property or to refund any advance payment of fee that has not been earned on the termination of representation:

1. Disbarment is generally appropriate when a Respondent knowingly converts

client property and causes injury or potential injury to a client.

2. Suspension is generally appropriate when a Respondent knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
3. Public reprimand is generally appropriate when a Respondent is negligent in dealing with client property and causes injury or potential injury to a client.
4. Private reprimand is generally appropriate when a Respondent is negligent in dealing with client property and causes little or no actual or potential injury to a client.

C. Failure to Preserve the Client's Confidences

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving improper disclosure of information relating to the representation of a client:

1. Disbarment is generally appropriate when a Respondent, with the intent to benefit the Respondent or another, knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
2. Suspension is generally appropriate when a Respondent knowingly reveals information relating to the representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
3. Public reprimand is generally appropriate when a Respondent negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed, and this disclosure causes injury or potential injury to a client.
4. Private reprimand is generally appropriate when a Respondent negligently reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed and this disclosure causes little or no actual or potential injury to a client.

D. Failure to Avoid Conflicts of Interest

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving conflicts of interest:

1. Disbarment is generally appropriate when a Respondent, without the informed consent of client(s):

- (a) engages in representation of a client knowing that the Respondent's interests are adverse to the client's with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to the client; or
  - (b) simultaneously represents clients that the Respondent knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client; or
  - (c) represents a client in a matter substantially related to a matter in which the interests of a present or former client are materially adverse, and knowingly uses information relating to the representation of a client with the intent to benefit the Respondent or another, and causes serious or potentially serious injury to a client.
2. Suspension is generally appropriate when a Respondent knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.
  3. Public reprimand is generally appropriate when a Respondent is negligent in determining whether the representation of a client may be materially affected by the Respondent's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client.
  4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence in determining whether the representation of a client may be materially affected by the Respondent's own interests, or whether the representation will adversely affect another client, and causes little or no actual or potential injury to a client.

E. Lack of Candor

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases where the lawyer engages in dishonesty, fraud, deceit, or misrepresentation directed toward a client:

1. Disbarment is generally appropriate when a Respondent knowingly deceives a client with the intent to benefit the Respondent or another, and causes serious injury or potential serious injury to a client.
2. Suspension is generally appropriate when a Respondent knowingly deceives a client, and causes injury or potential injury to the client.
3. Public reprimand is generally appropriate when a Respondent is negligent in determining the accuracy or completeness of information provided to a client, and causes injury or potential injury to the client.

4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence in determining the accuracy or completeness of information provided to a client, and causes little or no actual or potential injury to the client.

## **15.05. Violations of Duties Owed to the Legal System**

### **A. False Statements, Fraud, and Misrepresentation**

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving conduct that impedes the administration of justice or that involves dishonesty, fraud, deceit, or misrepresentation to a court or another:

1. Disbarment is generally appropriate when a Respondent, with the intent to deceive the court or another, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding.
2. Suspension is generally appropriate when a Respondent knows that false statements or documents are being submitted to the court or another or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party, or causes an adverse or potentially adverse effect on the legal proceeding.
3. Public reprimand is generally appropriate when a Respondent is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party, or causes an adverse or potentially adverse effect on the legal proceeding.
4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence in determining whether submitted statements or documents are false or in failing to disclose material information upon learning of its falsity, and causes little or no actual or potential injury to a party, or causes little or no adverse or potentially adverse effect on the legal proceeding.

### **B. Abuse of the Legal Process**

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving failure to bring a meritorious claim, failure to minimize the burdens and delays of litigation, lack of fairness in adjudicatory proceedings, improper extrajudicial statements, improper means involving third persons, or improper discriminatory activities:

1. Disbarment is generally appropriate when a Respondent knowingly engages in an abuse of the legal process with the intent to obtain a benefit for the Respondent or another, and causes serious injury or potentially serious injury to a client or other party or causes serious or potentially serious interference with a legal proceeding.
2. Suspension is generally appropriate when a Respondent knows that he or she is abusing the legal process, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
3. Public reprimand is generally appropriate when a Respondent negligently engages in conduct involving an abuse of the legal process, and causes injury or potential injury to a client or other party, or causes interference or potential interference with a legal proceeding.
4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence that involves an abuse of the legal process, and causes little or no actual or potential injury to a client or other party, or causes little or no actual or potential interference with a legal proceeding.

C. Improper Communications with Individuals in the Legal System

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following Sanctions are generally appropriate in cases involving attempts to influence a judge, juror, prospective juror or other official by means prohibited by law or rules of practice or procedure, or improper communications with one represented by counsel or unrepresented individuals:

1. Disbarment is generally appropriate when a Respondent:
  - (a) intentionally tampers with a witness and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
  - (b) makes an ex parte communication with a judge or juror with intent to affect the outcome of the proceeding, and causes serious or potentially serious injury to a party, or causes significant or potentially significant interference with the outcome of the legal proceeding; or
  - (c) improperly communicates with someone in the legal system other than a witness, judge, or juror with the intent to influence or affect the outcome of the proceeding, and causes significant or potentially significant interference with the outcome of the legal proceeding.
2. Suspension is generally appropriate when a Respondent engages in communication with an individual in the legal system when the Respondent

knows or should know that such communication is improper, and causes injury or potential injury to a party or causes interference or potential interference with the outcome of the legal proceeding.

3. Public reprimand is generally appropriate when a Respondent is negligent in determining whether it is proper to engage in communication with an individual in the legal system, and causes injury or potential injury to a party or interference or potential interference with the outcome of the legal proceeding.
4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence in improperly communicating with an individual in the legal system, and causes little or no actual or potential injury to a party, or causes little or no actual or potential interference with the outcome of the legal proceeding.

### **15.06. Violations of Duties Owed to the Public**

#### **A. Failure to Maintain Personal Integrity**

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following Sanctions are generally appropriate in cases involving (1) barratry or the commission of any other criminal act that reflects adversely on the Respondent's honesty, trustworthiness, or fitness as a lawyer in other respects; or (2) the failure to maintain personal integrity in other respects, including stating or implying an ability to influence improperly a government agency or official or by improperly assisting a judge or judicial official in conduct that violates rules of judicial conduct or other law:

1. Disbarment is generally appropriate when:
  - (a) a Respondent engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
  - (b) a Respondent knowingly engages in any other conduct involving the failure to maintain personal integrity and causes serious injury or potential injury to others or the legal system.
2. Suspension is generally appropriate when:
  - (a) a Respondent knowingly engages in criminal conduct that does not contain the elements listed in Guideline 15.06(A)(1) and that seriously adversely reflects on the Respondent's fitness to practice law; or

- (b) knowingly engages in conduct involving the failure to maintain personal integrity and causes injury or potential injury to others or the legal system.
- 3. Public reprimand is generally appropriate when a Respondent negligently engages in any other conduct involving the failure to maintain personal integrity and causes injury or potential injury to others or the legal system.
- 4. Private reprimand is generally appropriate when a Respondent negligently engages in any other conduct involving the failure to maintain personal integrity and causes little or no actual or potential injury to others or the legal system.

**B. Failure to Maintain the Public Trust**

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving public officials who engage in conduct that impedes the administration of justice:

- 1. Disbarment is generally appropriate when a Respondent in an official or governmental position knowingly misuses the position with the intent to obtain a significant benefit or advantage for himself or another, or with the intent to cause serious or potentially serious injury to a party or to the integrity of the legal process.
- 2. Suspension is generally appropriate when a Respondent in an official or governmental position knowingly fails to follow applicable procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.
- 3. Public reprimand is generally appropriate when a Respondent in an official or governmental position negligently fails to follow applicable procedures or rules, and causes injury or potential injury to a party or to the integrity of the legal process.
- 4. Private reprimand is generally appropriate when a Respondent in an official or governmental position engages in an isolated instance of negligence in not following applicable procedures or rules, and causes little or no actual or potential injury to a party or to the integrity of the legal process.

**15.07. Violations of Other Duties as a Professional**

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving false or misleading communication about the lawyer or the lawyer's services; improper solicitation of professional employment from a prospective client; unconscionable, illegal, or improper fees; unauthorized practice of law; improper withdrawal from

representation; failure to supervise; improper restrictions on the right to practice; appointments by a tribunal; failure to report professional misconduct; failure to respond to a disciplinary agency; improper conduct involving bar admission or reinstatement proceedings; statements regarding judicial and legal officials or a lawyer as a judicial candidate; or improper conduct in the role as advisor or evaluator.

1. Disbarment is generally appropriate when a Respondent knowingly engages in conduct that is a violation of a duty owed as a professional with the intent to obtain a benefit for the Respondent or another, and causes serious or potentially serious injury to a client, the public, or the legal system.
2. Suspension is generally appropriate when a Respondent knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
3. Public reprimand is generally appropriate when a Respondent negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.
4. Private reprimand is generally appropriate when a Respondent engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual or potential injury to a client, the public, or the legal system.

#### **15.08. Prior Discipline Orders**

Absent aggravating or mitigating circumstances, and upon application of the factors set out in Rule 15.02, the following sanctions are generally appropriate in cases involving prior discipline.

1. Disbarment is generally appropriate when a Respondent:
  - (a) intentionally or knowingly violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
  - (b) has been suspended for the same or similar misconduct, and intentionally or knowingly engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
2. Suspension is generally appropriate when a Respondent has been reprimanded for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
3. Public reprimand is generally appropriate when a Respondent:

- (a) negligently violates the terms of a prior disciplinary order and such violation causes injury or potential injury to a client, the public, the legal system, or the profession; or
  - (b) has received a private reprimand for the same or similar misconduct and engages in further similar acts of misconduct that cause injury or potential injury to a client, the public, the legal system, or the profession.
4. A private reprimand is generally not an appropriate sanction when a Respondent violates the terms of a prior disciplinary order or when a Respondent has engaged in the same or similar misconduct in the past.
5. A private reprimand should not be utilized when a Respondent:
- (a) has received a private reprimand within the preceding five-year period for a violation of the same disciplinary rule; or
  - (b) has engaged in misconduct involving theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
  - (c) has engaged in misconduct involving 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.
6. A private reprimand is not an available sanction in a Disciplinary Action.

### **15.09. Aggravation and Mitigation**

#### **A. Generally**

After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

#### **B. Aggravation**

1. Definition. Aggravation or aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed.
2. Factors which may be considered in aggravation.

Aggravating factors include:

- (a) prior disciplinary record, including private reprimands;

- (b) dishonest or selfish motive;
- (c) a pattern of misconduct;
- (d) multiple violations;
- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary authority or uncooperative conduct during proceedings;
- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) refusal to acknowledge wrongful nature of conduct;
- (h) vulnerability of victim;
- (i) substantial experience in the practice of law;
- (j) indifference to making restitution;
- (k) illegal conduct, including that involving the use of controlled substances;
- (l) unsuccessful participation in the Grievance Referral Program.

C. Mitigation

1. Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.
2. Factors which may be considered in mitigation.

Mitigating factors include:

- (a) absence of a prior disciplinary record;
- (b) absence of a dishonest or selfish motive;
- (c) personal or emotional problems;
- (d) timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) full and free disclosure to disciplinary authority or cooperative conduct during proceedings;

- (f) inexperience in the practice of law;
- (g) character or reputation;
- (h) physical disability suffered by the Respondent at the time of the misconduct that caused or contributed to the misconduct;
- (i) mental disability or chemical dependency including alcoholism or drug abuse when:
  - (1) there is medical evidence that the Respondent is affected by a chemical dependency or mental disability;
  - (2) the chemical dependency or mental disability caused the misconduct;
  - (3) the Respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
  - (4) the recovery arrested the misconduct and recurrence of that misconduct is unlikely;
- (j) delay in disciplinary proceedings;
- (k) imposition of other penalties or sanctions;
- (l) remorse;
- (m) remoteness of prior sanctions.

D. Factors which are neither aggravating nor mitigating.

The following factors should not be considered as either aggravating or mitigating:

- (a) forced or compelled restitution;
- (b) agreeing to the client's demand for certain improper behavior or result;
- (c) withdrawal of complaint against the Respondent;
- (d) complainant's recommendation as to sanctions;
- (e) failure of injured client to complain.

**PART XVI. GRIEVANCE REFERRAL PROGRAM**

**16.01. Grievance Referral Program.** The Grievance Referral Program is established as a diversion program designed to address professionalism issues in minor misconduct cases and component of the attorney discipline system.

**16.02. Eligibility.** The following criteria are to be considered for participation in the program:

- A. Respondent has not been disciplined within the prior three years.
- B. Respondent has not been disciplined for similar conduct within the prior five years.
- C. Misconduct does not involve misappropriation of funds or breach of fiduciary duties.
- D. Misconduct does not involve dishonesty, fraud, or misrepresentation.
- E. Misconduct did not result in substantial harm or prejudice to client or complainant.
- F. Respondent maintained cooperative attitude toward the proceedings.
- G. Participation is likely to benefit the Respondent and further the goal of protection of the public.
- H. Misconduct does not constitute a crime that would subject the Respondent to compulsory discipline under Part VIII of these Rules.

**16.03. Procedure.**

- A. The Commission may refer an eligible Respondent to the program in any disciplinary matter that has reached the Just Cause stage of the process. An eligible Respondent may also be referred to the program after an investigatory hearing pursuant to Rule 2.12.
- B. The Respondent must agree to meet with the program administrator for an assessment of the professionalism issues that contributed to the misconduct.
- C. The Respondent must agree in writing to waive any applicable time limits and to complete specific terms and conditions, including restitution if appropriate, by a date certain and to pay for any costs associated with the terms and conditions.
- D. If the Respondent agrees to participate and completes the terms in a timely manner, the underlying grievance will be dismissed.
- E. If the Respondent does not fully complete the terms of the agreement in a timely

manner, the underlying grievance will continue in the ordinary disciplinary process.

F. Generally, a Respondent is eligible to participate in the program one time.

**16.04. Reporting.**

The program administrator will provide periodic reports to the Commission on the progress of the program, including the number of cases resolved.

**PART XVIIXV. MISCELLANEOUS PROVISIONS**

**17.01~~15~~.01. Enforcement of Judgments:** The following judgments have the force of a final judgment of a district court: judgments entered by an Investigatory Panel, final judgments of an Evidentiary Panel and judgments entered by the Board of Disciplinary Appeals. To enforce a judgment, the Commission may apply to a district court in the county of the residence of the Respondent. In enforcing the judgment, the court has available to it all writs and processes, as well as the power of contempt, to enforce the judgment as if the judgment had been the court's own.

**17.02~~15~~.02. Effect of Related Litigation:** The processing of a Grievance, Complaint, Disciplinary Proceeding, or Disciplinary Action is not, except for good cause, to be delayed or abated because of substantial similarity to the material allegations in pending civil or criminal litigation.

**17.03~~15~~.03. Effect on Related Litigation:** Neither the Complainant nor the Respondent is affected by the doctrines of res judicata or estoppel by judgment from any Disciplinary Action.

**17.04~~15~~.04. Effect of Delay or Settlement by Complainant:** None of the following alone justifies the discontinuance or abatement of a Grievance or Complaint being processed through the disciplinary system: (1) the unwillingness or the neglect of a Complainant to cooperate; (2) the settlement or compromise of matters between the Complainant and the Respondent; (3) the payment of monies by the Respondent to the Complainant.

**17.05~~15~~.05. Effect of Time Limitations:** The time periods provided in Rules 2.10, 2.12, 2.15, 2.17C, 2.17E, 2.17P, 2.25, 3.02, 3.04, 7.11, 9.02, 9.03, 10.02, 11.01, 11.08, and 12.06(d) are mandatory. All other time periods herein provided are directory only and the failure to comply with them does not result in the invalidation of an act or event by reason of the noncompliance with those time limits.

**17.06~~15~~.06. Limitations, General Rule and Exceptions:**

A. *General Rule:* No attorney may be disciplined for Professional Misconduct that

occurred more than four years before the date on which a Grievance alleging the Professional Misconduct is received by the Chief Disciplinary Counsel.

- 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 occurred in a prosecution 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 Fraud or Concealment:* Where fraud or concealment is involved, 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.

**17.0715-07. Residence:** For purposes of these rules, a person licensed to practice law in Texas is considered a resident of the county in Texas of his or her principal residence. A person licensed to practice law in Texas but not residing in Texas is deemed to be a resident of Travis County, Texas, for all purposes.

**17.0815-08. Privilege:** All privileges of the attorney-client relationship shall apply to all communications, written and oral, and all other materials and statements between the Chief Disciplinary Counsel and the Commission or the Chief Disciplinary Counsel and Investigatory Panel subject to the provisions of Rule 6.08.

**17.0915-09. Immunity:** No lawsuit may be instituted against any Complainant or witness predicated upon the filing of a Grievance or participation in the attorney disciplinary and disability system. All members of the Commission, the Chief Disciplinary Counsel (including Special Assistant Disciplinary Counsel appointed by the Commission and attorneys employed on a contract basis by the Chief Disciplinary Counsel), all members of Committees, all members of the Board of Disciplinary Appeals, all members of the District Disability Committees, all officers and Directors of the State Bar, and the staff members of the aforementioned entities are immune from suit for any conduct in the course of their official duties. The immunity is absolute and unqualified and extends to all actions at law or in equity.

**17.1015-10. Maintenance of Funds or Other Property Held for Clients and Others:** Every attorney licensed to practice law in Texas who maintains, or is required to maintain, a separate client trust account or accounts, designated as such, into which funds of clients or other fiduciary funds must be deposited, shall further maintain and preserve for a period of five years after final disposition of the underlying matter, the records of such accounts, including checkbooks, canceled checks, check stubs, check registers, bank statements, vouchers, deposit slips, ledgers, journals, closing statements, accountings, and

other statements of receipts and disbursements rendered to clients or other parties with regard to client trust funds or other similar records clearly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of a client.

**15.11. Restrictions on Imposition of Certain Sanctions:**

A. ~~Public reprimands shall not be utilized if:~~

- ~~1. A public reprimand has been imposed upon the Respondent within the preceding five (5) year period for a violation of the same disciplinary rule; or~~
- ~~2. The Respondent has previously received two or more public reprimands whether or not for violations of the same disciplinary rule within the preceding five year period.~~

B. ~~Fully probated suspensions shall not be utilized if:~~

- ~~1. A public reprimand or fully probated suspension has been imposed upon the Respondent within the preceding five year period for a violation of the same disciplinary rule; or~~
- ~~2. The Respondent has previously received two or more fully probated suspensions whether or not for violations of the same disciplinary rule within the preceding five year period; or~~
- ~~3. The Respondent has previously received two or more sanctions of public reprimand or greater imposed for conflict of interest, theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee.~~

C. ~~In the event that a fully probated suspension is not available under this rule, any sanction imposed shall be for no less than thirty days of active suspension.~~

**APPENDIX A TO THE TEXAS RULES OF DISCIPLINARY PROCEDURE**

Competent and Diligent Representation 1.01	Guideline 15.04A
Scope and Objectives of Representation 1.02 (a)(b) 1.02 (c)(d)(e)(f) 1.02 (g)	Guideline 15.04A Guideline 15.05A Guideline 15.07
Communication 1.03	Guideline 15.04A
Fees 1.04	Guideline 15.07; 15.04E
Confidentiality of Information 1.05	Guideline 15.04C
Conflict of Interest: General Rule 1.06	Guideline 15.04D
Conflict of Interest: Intermediary 1.07	Guideline 15.04D
Conflict of Interest: Prohibited Transactions 1.08	Guideline 15.04D
Conflict of Interest: Former Client 1.09	Guideline 15.04D; 15.04C
Successive Government and Private Employment 1.10	Guideline 15.04D
Adjudicatory Official or Law Clerk 1.11	Guideline 15.04D
Organization as a Client 1.12	Guideline 15.04D
Conflicts: Public Interest Activities 1.13	Guideline 15.04D
Safekeeping Property 1.14	Guideline 15.04B
Declining or Termination Representation 1.15 1.15(d)	Guideline 15.07 Guideline 15.04B
Advisor 2.01	Guideline 15.07
Evaluation for Use by Third Person 2.02	Guideline 15.07
Meritorious Claims and Contentions 3.01	Guideline 15.05B
Minimizing the Burdens and Delays of Litigation 3.02	Guideline 15.05B

Candor Toward the Tribunal 3.03	Guideline 15.05A
Fairness in the Adjudicatory Proceedings 3.04	Guideline 15.05B; 15.05A
Maintaining Impartiality of Tribunal 3.05	Guideline 15.05C
Maintaining Integrity of Jury System 3.06	Guideline 15.05C
Trial Publicity 3.07	Guideline 15.05B
Lawyer as Witness 3.08	Guideline 15.04D
Special Responsibilities of a Prosecutor 3.09	Guideline 15.05B; 15.06B
Advocate in Nonadjudicative Proceedings 3.10	Guideline 15.05B; 15.05C
Truthfulness in Statement to Others 4.01	Guideline 15.05A
Communication with One Represented by Counsel 4.02	Guideline 15.05C
Dealing with Unrepresented Person 4.03	Guideline 15.05C
Respect for Rights of Third Persons 4.04	Guideline 15.05B
Responsibilities of a Partner or Supervisory Lawyer 5.01	Guideline 15.07
Responsibilities of a Supervised Lawyer 5.02	Guideline 15.07
Responsibilities Regarding Nonlawyer Assistants 5.03	Guideline 15.07
Professional Independence of a Lawyer 5.04	Guideline 15.07; 15.04D
Unauthorized Practice of Law 5.05	Guideline 15.07
Restrictions on Right to Practice 5.06	Guideline 15.07
Prohibited Discriminatory Activities 5.08	Guideline 15.05B
Accepting Appointments by a Tribunal 6.01	Guideline 15.07
Firm Names and Letterhead 7.01	Guideline 15.07

Communications Concerning a Lawyer's Services 7.02	Guideline 15.07
Prohibited Solicitations and Payments 7.03	Guideline 15.07
Advertisements in the Public Media 7.04	Guideline 15.07
Prohibited Written, Electronic, or Digital Solicitation 7.05	Guideline 15.07
Prohibited Employment 7.06	Guideline 15.07
Filing Requirements for Public Advertisements and Written, Recorded, Electronic, or Other Digital Solicitations 7.07	Guideline 15.07
Bar Admission, Reinstatement, and Disciplinary Matters 8.01	Guideline 15.07
Judicial and Legal Officials 8.02	Guideline 15.07
Reporting Professional Misconduct 8.03	Guideline 15.07
Misconduct 8.04 8.04(a)(2)(5)(6)(9) 8.04(a)(3) 8.04(a)(4) 8.04(a)(7)(10)(11) 8.04(a)(8)(12)	Guideline 15.04 – 15.08  15.06A 15.04E; 15.05A 15.05A 15.08 15.07
Jurisdiction 8.05	Guideline: None
Severability 9.01	Guideline: None