



The Attorney Disciplinary System in Texas

**Construction Law Section
Dallas Bar Association
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GRIEVANCE FILED WITH CHIEF DISCIPLINARY COUNSEL. All disciplinary actions and proceedings begin with the filing of a Grievance with the Chief Disciplinary Counsel's office ("CDC"). There is no privity required between the complaining party and Respondent attorney. Grievances can be filed against any lawyer licensed in the state of Texas by any person or entity. The Chief Disciplinary Counsel may also initiate a Grievance. (Texas Rules of Disciplinary Procedure ("TRDP") 1.06R)

CLASSIFICATION. Upon receipt of the Grievance, the CDC *within 30 days* examines the Grievance to determine whether it constitutes an Inquiry or a Complaint. If the Grievance does not, even if true, describe conduct that would constitute Professional Misconduct, it is classified as an *Inquiry* and dismissed with notice to the Complainant and Respondent. If the Grievance states an allegation of professional misconduct, it is classified as a *Complaint* and notice of the Complaint, along with a photocopy of the Complaint, is served on the Respondent informing him or her of the duty to respond within 30 days from receipt of the notice. (TRDP 2.10)

INVESTIGATION AND DETERMINATION OF JUST CAUSE. *Within 60 days* from the Respondent's response deadline, the CDC must conclude its investigation and determine whether there is Just Cause to proceed. *Just Cause* is defined as "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." (TRDP 1.06U)

SUMMARY DISPOSITION PANEL. If no Just Cause is found, the CDC will present the Complaint to a Summary Disposition Panel of the grievance committee without the presence of the Complainant, Respondent, or witnesses. The Summary Disposition Panel will consider the documents and evidence and determine whether the Complaint should be dismissed or proceed. There is no appeal from this decision. Venue is in the county where the alleged Professional Misconduct occurred, in whole or in part. (TRDP 2.13; 2.11)

NOTIFICATION OF COMPLAINT AND ELECTION. If the CDC finds Just Cause, or the Summary Disposition Panel votes to proceed, the CDC will notify the Respondent in writing of the Just Cause decision. The Respondent will also be notified of the acts and/or omissions of alleged Professional Misconduct and rule violations, and election options. *Within 20 days* from the receipt of the notice of allegations, the Respondent must elect to have the Complaint heard in district court or by an Evidentiary Panel. A failure to timely elect will result in the Complaint proceeding before an Evidentiary Panel. (TRDP 2.14D; 2.15)

A Complaint proceeds before an Evidentiary Panel when:

- Respondent elects to have the matter heard before a panel; or
- Respondent fails to timely elect.

GENERAL RULES GOVERNING EVIDENTIARY PANEL PROCEEDINGS

APPOINTMENT OF PANEL. Within 15 days of receipt of the election or the day following the election deadline, the Grievance Committee Chair appoints an Evidentiary Panel to hear the Complaint. The Evidentiary Panel may not include any person who served on the Summary Disposition Panel and must have a ratio of two attorney members for every public member. (TRDP 2.17)

EVIDENTIARY PANEL COMPOSITION. Grievance Committees act through panels to conduct evidentiary hearings. Panels must be composed of two attorney members for each public member. Most Panels in the state are 6 member panels, each composed of 4 attorneys and 2 public members. (TRDP 2.07)

QUORUM REQUIRED. In order for an Evidentiary Panel to conduct business, a quorum of the member of the Panel must be present. A quorum consists of a majority of the membership of the Panel **and** must include one public member for every two attorney members present. (TRDP 2.07)

RECUSAL AND DISQUALIFICATION. A member is disqualified or is subject to recusal as a panel member for an evidentiary hearing if a district court judge would, under similar circumstances, be disqualified or recused. If a member is disqualified or recused, another member shall be appointed by the Grievance Committee chair. (TRDP 2.06)

Any alleged ground for disqualification or recusal of a panel member are conclusively waived if not brought to the attention of the panel within 10 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 the ten days after they were discovered or in the exercise of reasonable diligence should have been discovered.

VENUE. In an Evidentiary Panel proceeding, venue shall be in the county of Respondent's principal place of practice; or if the Respondent does not maintain a place of practice within the State of Texas, proceedings shall be conducted by a Panel for the county of Respondent's residence and, if Respondent maintains neither a residence or principal place of practice, then where the professional misconduct occurred, in whole or in part. In all other instances, venue is in Travis County, Texas. (TRDP 2.11B).

PARTIES. The parties to an Evidentiary Panel proceeding are the Commission for Lawyer Discipline (represented by the Chief Disciplinary Counsel) and the Respondent. A Complainant is a potential witness, but is not a party. (TRDP 1.06)

BURDEN OF PROOF. The Commission for Lawyer Discipline has the burden of proof to prove its material allegations by a preponderance of the evidence. (TRDP 2.17M)

RECORD OF THE HEARING. All Evidentiary Panel proceedings are recorded by a court reporter. (TRDP 2.17N)

CONFIDENTIALITY. Evidentiary Panel proceedings are confidential. Only if the Respondent has waived confidentiality, or the proceeding is based upon a conviction for a serious crime, may the pendency, subject matter, and status of an Evidentiary Panel proceeding be disclosed by the Complainant, Respondent, or Chief Disciplinary Counsel.

The deliberations of an Evidentiary Panel are strictly confidential and not subject to discovery. (TRDP 2.16). If the Evidentiary Panel finds that Professional Misconduct has occurred and imposes any sanction other than a private reprimand, all information, documents, statements and other information coming to the attention of the Evidentiary Panel shall be, upon request, made public. (TRDP 2.16)

EVIDENTIARY PANEL PROCEEDING

RULINGS BY THE EVIDENTIARY PANEL: Generally, all rulings and decisions in an Evidentiary Panel proceeding must be made by a majority vote of a quorum of the Panel (i.e., motion for continuance; motion for new trial; motion to stay judgment; final decision).

The Panel Chair may rule alone only in matters involving discovery (modification of discovery limitations, discovery dispute resolution, and issuing subpoenas [See TRDP 2.17F, G, & H]), and rulings related to the admission or exclusion of evidence during a hearing (TRDP 2.17L).

EVIDENTIARY PETITION FILED. The Evidentiary Petition must be filed with the Evidentiary Panel within 60 days from receipt of the Respondent's election or the election deadline.

SERVICE OF THE EVIDENTIARY PETITION. Service of the Petition must be in accordance with Rule 2.09 which provides for service by certified mail, return receipt requested, at the address provided by the Respondent as shown on the membership rolls maintained by the Clerk of the Supreme Court at the time of receipt of the Grievance by the CDC or by any other means of service permitted by the Texas Rules of Civil Procedure. (TRDP 2.17A)

RESPONDENT'S ANSWER. The Respondent is required to file a responsive pleading specifically admitting or denying each allegation of Professional Misconduct. The answer must be filed no later than 5:00 p.m. on the first Monday following the expiration of 20 days after service. (TRDP 2.17B)

DISCOVERY.

- ◆ **REQUEST FOR DISCLOSURE** – No later than 30 days prior to the first setting of the Evidentiary hearing, each party may obtain disclosure of:
 - correct names of the parties;
 - factual bases of the claims or defenses;
 - name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of the person's connection to the case;
 - identification of experts and description of the expert's opinions; and
 - witness statements. (TRDP 2.17D)

In addition to the Request for Disclosure, other limited discovery is afforded the parties in all cases and must be conducted between the time the petition is filed and 30 days before the Evidentiary hearing date. The discovery limitations may be modified by agreement or by the Evidentiary Panel chair upon a showing of reasonable need.

- ◆ **DEPOSITIONS** – No more than 6 hours total per party to examine and cross-examine all witnesses. (TRDP 2.17E(2))
- ◆ **INTERROGATORIES** – No more than 25 written interrogatories. (subparts count as a full interrogatory; interrogatories asking for identification or authentication of documents not counted) (TRDP 2.17E3)
- ◆ **REQUESTS FOR PRODUCTION** – No limits. (TRDP 2.17E4)
- ◆ **REQUESTS FOR ADMISSIONS** – No limits. (TRDP 2.17E5)
- ◆ **SUBPOENA POWER**–Each party may compel the attendance of a witness or the production of documents by subpoena. The requesting party must submit a written subpoena in proper form to the panel chair for issuance and the requesting party is responsible for service. Enforcement of subpoenas is through the district court. (2.17 H & I)

EVIDENTIARY HEARING.

- ◆ **SETTING.** Evidentiary Panel proceedings are set for hearing within 180 days after the date the answer is filed, except for good cause shown. In addition, there is a minimum 45 day notice of hearing requirement unless waived by the parties. (2.170)
- ◆ **EVIDENCE.** The Evidentiary Panel sits as an adjudicatory body with the Panel Chair serving as the “presiding judge” by calling the case, asking for argument, and making rulings on objections and the admission or exclusion of evidence. The Commission, as the party with the burden of proof, will make an opening statement and proceed with its case in chief in much the same manner as a district court case.
 - ◆ Evidentiary Panel Members may question any witness. (TRDP 2.17L)
 - ◆ Respondent may have counsel present during hearing and is allowed to participate fully in the presentation of evidence and questioning of witnesses. (TRDP 2.17L)
 - ◆ Complainant may have counsel present, but may not present evidence, question witnesses, or present argument to the Panel. (TRDP 2.17L)
- ◆ **EVIDENTIARY RULINGS.** The Panel Chair makes all rulings on the admissibility of evidence. The Panel Chair shall admit “all such probative and relevant evidence as he or she deems necessary for a fair and complete hearing, generally in accord with the Texas Rules of Evidence.” (TRDP 2.17L). No ruling upon the

evidence shall be a basis for reversal solely because it fails to strictly comply with the Texas Rules of Evidence.” (TRDP 2.17L)

- ◆ **ALTERNATIVE DISPUTE RESOLUTION.** Upon motion or otherwise, the Evidentiary Panel Chair may order the Commission and the Respondent to participate in mandatory alternative dispute resolution as provided by Chapter 154 of the Civil Practice and Remedies Code or as otherwise provided by law when deemed appropriate. (TRDP 2.17K)

DECISION. After conducting the Evidentiary Hearing, the Evidentiary Panel must issue judgment within 30 days. The Evidentiary Panel may:

- find Professional Misconduct and impose Sanctions;
- find no Professional Misconduct and dismiss the case; or
- find that the Respondent suffers from a Disability and forward the finding to the Board of Disciplinary Appeals. (TRDP 2.17P)

DEFAULT. If Respondent fails to answer timely, the Commission will seek a default. The Commission will file a motion for default and the matter will be set for a default hearing. (TRDP 2.17C). The Respondent is served with the motion and hearing notice.

Upon a showing of default, all facts alleged in the Evidentiary Petition are taken as true and Professional Misconduct found. A Sanctions hearing is held to determine the appropriate Sanction. An evidentiary hearing to determine the appropriate sanction can be held immediately or at a later date. (TRDP 2.17C).

IMPOSITION OF SANCTIONS.

BIFURCATED HEARING. The Evidentiary Panel may, in its discretion, conduct a separate hearing on Sanctions after Professional Misconduct is found. (TRDP 2.18)

In determining the appropriate Sanctions, the Evidentiary Panel shall consider:

- Nature and degree of the Professional Misconduct
- Seriousness of and circumstances surrounding the Professional Misconduct
- Loss or damage to client
- Damage to the profession
- Assurance that those who seek legal services in the future will be insulated from the type of Professional Misconduct found
- Profit to the attorney
- Avoidance of repetition
- Deterrent effect on others
- Maintenance of respect for the legal profession
- Conduct of Respondent during the course of the Disciplinary Proceeding
- Respondent’s disciplinary history, including any private reprimands

Note: *The 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.* (TRDP 2.18).

AVAILABLE SANCTIONS: The Panel may consider the following Sanctions:

- Disbarment (Loss of license to practice law)
- Suspension for a term certain (Respondent cannot practice law during active term)
- Probation of a suspension (Respondent may practice law with conditions)
- Partially probated suspension (Combination of active and probated)
- Public Reprimand
- Private Reprimand

(TRDP 1.06(Y)).

RESTRICTIONS ON IMPOSITION OF CERTAIN SANCTIONS

- ◆ A Public Reprimand is not available if:
 - a Public Reprimand has been imposed upon Respondent within the preceding five-year period for a violation of the same Disciplinary Rule, or
 - Respondent has previously received two or more Public Reprimands whether or not for violations of the same Disciplinary Rule within the preceding five (5) year period. (TRDP 15.11)

- ◆ A Fully Probated Suspension is not available if:
 - A Public Reprimand or Fully Probated Suspension has been imposed upon the respondent lawyer within the preceding five year period for a violation of the same disciplinary rule; or
 - The respondent lawyer 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
 - The respondent lawyer 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. (TRDP 15.11)

- ◆ A Private Reprimand is not available if:
 - A Private Reprimand has been imposed upon the respondent lawyer within the preceding five (5) year period for a violation of the same disciplinary rule;
 - The respondent lawyer has previously received two (2) or more Private Reprimands, whether or not for violations of the same disciplinary rule, within the preceding ten (10) years; or
 - The misconduct includes theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or

- The misconduct has resulted in a substantial injury to the client, the public, the legal system, or the profession; or
- There is a likelihood of future misconduct by the respondent lawyer; or
- The misconduct was an intentional violation of the ethics rules

(Commission for Lawyer Discipline Internal Operating Rule 13; Approved by Order of the Supreme Court).

◆ **ADDITIONAL SANCTIONS:** The term “Sanction” may include:

- Restitution to client(s) or to the Client Security Fund
- Reasonable attorneys’ fees and all direct expenses associated with the proceedings. (TRDP 1.06Y (a)(b))

POST JUDGMENT MOTIONS. All rulings on post judgment motions (motion for new hearing, motion to set aside default, motion to modify judgment, etc.) require a majority vote of a quorum of the entire panel under the standards of the Texas Rules of Civil Procedure. (TRDP 2.22)

APPEALS OF EVIDENTIARY CASES.

The Commission and Respondent may perfect an appeal to the Board of Disciplinary Appeals (BODA) by filing a notice of appeal within 30 days from judgment or within 90 days after judgment if any party timely files a motion for new trial or a motion to modify the judgment.

All appeals are determined under the standard of substantial evidence. Appeals from a BODA decision are to the Supreme Court of Texas under the substantial evidence standard. (TRDP 2.24)

BOARD OF DISCIPLINARY APPEAL DECISIONS.

In considering an appeal, BODA may:

- Affirm in whole or in part the decision of the Evidentiary Panel;
- Modify the panel’s finding(s) and affirm the finding(s) as modified;
- Reverse in whole or in part the panel’s finding(s) and render such decision as the panel should have rendered; or
- Reverse the panel’s finding(s) and remand the cause for further proceedings to be conducted by:
 - the panel that entered the finding(s); or,
 - a statewide grievance committee panel appointed by BODA and composed of members selected from a state bar district other than the district from which the appeal was taken. (TRDP 2.26)

District Court Proceeding

DISCIPLINARY PETITION FILED. The petition must be filed with the Supreme Court of Texas no more than sixty days after the receipt of Respondent's election to proceed in district court. (TRDP 3.01)

ASSIGNMENT OF JUDGE. Upon receipt of a disciplinary petition, the Supreme Court shall appoint an active district judge who does not reside in the Administrative Judicial District in which the Respondent resides to preside over the case. (TRDP 3.02)

FILING, SERVICE AND VENUE. After the trial judge has been appointed, the Clerk of the Supreme Court shall forward the disciplinary petition and a copy of the appointing Order to the district clerk of the county of venue, which is the county of the Respondent's principal place of practice. (TRDP 3.03)

RESPONDENT'S ANSWER. The Respondent's answer must follow the form of answers in civil cases and must be filed no later than 10:00 a.m. on the first Monday following the expiration of twenty days after service. (TRDP 3.04)

DISCOVERY. Discovery is conducted as in civil cases generally, except that the following matters are not discoverable:

- the discussions, thought processes and individual votes of the Summary Disposition Panel (if any)
- the thought processes of the CDC
- any communication to and from the CDC that would be privileged (TRDP 3.05)

TRIAL BY JURY. Either the Respondent or the Commission shall have the right to a jury trial upon timely payment of the required fee. The Complainant does not have the right to demand a jury trial. (TRDP 3.06)

ADDITIONAL RULES IN THE TRIAL OF DISCIPLINARY ACTIONS. Disciplinary actions are civil in nature. Except as varied by the Texas Rules of Disciplinary Procedure, the Texas Rules of Civil Procedure apply. (TRDP 3.08)

IMPOSITION OF SANCTIONS. The trial court may, in its discretion, conduct a separate sanctions hearing. In determining the appropriate Sanction, the court shall consider factors similar to those that are considered by an evidentiary panel in imposing a sanction. (TRDP 3.10)

AVAILABLE SANCTIONS. A Private Reprimand is not available. The court may consider the following sanctions:

- Disbarment
- Suspension for a term certain
- Probation of suspension
- Partially probated suspension
- Public reprimand

APPEALS. A final judgment of the district court may be appealed as in civil cases generally.

PROCESSING A GRIEVANCE

