The “Grief-ance” System and What You Should Know

By Robert S. ‘Bob’ Bennett

I. CHANGES IN THE DISCIPLINARY SYSTEM

On May 1, 1992, the Texas Rules of Disciplinary Procedure became effective. The Commission for Lawyer Discipline was created,[1] The Commission has the responsibility "to exercise, in lawyer disciplinary proceedings only, all rights characteristically reposed in a client by the common law of this State, except where such rights are expressly hereby granted to a Committee."[2] It is this Commission that prosecutes attorneys charged with misconduct.

Given the rise in complaints against attorneys over the last few years, there is good reason for the concerns attorneys have with the grievance process and how it operates.[3] According to the State Bar of Texas, in 1995-1996, 9,252 written statements expressing dissatisfaction with an attorney were sent to the State Bar of Texas.[4] Although only 575 of these written statements actually resulted in disciplinary action, 5,449 were subsequently upgraded to official complaints by the Office of the Chief Disciplinary Counsel, because the written statement alleged an ethical violation and there were no grounds to dismiss it. Essentially, 5,449 Texas attorneys had to defend themselves (either by written response to a complaint or through a hearing) against grievances in the last year.

A contributing factor to the increase in attention given the grievance system is that in prior years groundless written statements were summarily dismissed. When this happened, the lawyer involved often did not even know that a written statement had ever been filed. Under the current disciplinary system written statements are handled much differently. It is still the case that many of the written statements prove groundless. While all written statements are not investigated by the investigatory panel, written statements must be reviewed by the Office of the Chief Disciplinary Counsel for a determination of whether there is any basis for upholding it as a "complaint." Approximately 10% of written statements subsequently upgraded to complaints result in some form of discipline for the attorney.[5]

A. Inquiry vs. Complaint

To fully understand the impact of the changes in the disciplinary system, it is necessary to differentiate a "written statement," from an "inquiry" or a "complaint." To file a grievance, a complainant (client, lawyer, judge - even the State Bar[6]) provides a statement or letter expressing dissatisfaction with an attorney to the State Bar. Persons who call the State Bar to report attorney misconduct may be interviewed by an investigator for the State Bar to reduce the complaint to writing, or the caller may be asked to fill out a grievance form. (The State Bar itself may bring a grievance against an attorney if it becomes aware of misconduct.[7]) This "written statement" is sent to the Office of the Chief Disciplinary Counsel who then determines whether the statement constitutes an "inquiry" or a "complaint."[8]

An "inquiry"[9] is any written matter concerning attorney conduct that, even if true, fails to set forth professional misconduct.[10] If a statement is found to be an "inquiry" (e.g. "Attorney A refused to accept my case") the complainant[11] is notified and has an opportunity to amend with additional information or they have thirty days to appeal the classification to the Board of Disciplinary Appeals.[12] The Board upholds the "classification" decision in approximately 88% of the cases appealed.[13]

If the statement is classified as a "complaint" the respondent is notified that attorney misconduct has been alleged against him/her and that he/she has thirty days to respond.[14] The respondent may also elect to appeal the grievance classification to the Board of Disciplinary Appeals. If a respondent perfects an appeal, the tendency of the appeal does not automatically stay the investigation and determination of "just cause", but no evidentiary panel may be assigned while an appeal is pending on the issue of whether a statement constitutes a complaint.[15] The complaint is then set for a hearing before an investigatory panel.[16]

B. Investigatory Hearing

The investigatory panel proceedings (often called the "grievance hearing") is heard by a local grievance committee to determine if there is "just cause."[17] It is at this hearing that many complaints are resolved in favor of the attorney. If the panel finds "just cause" the respondent will be notified in writing. The findings of fact and conclusions of law, provided by the panel, are negotiable, but a respondent should only contact the State Bar counsel, not the panel members.[18]

If the grievance is not resolved at this level (either there is no finding of "just cause" or "just cause" is determined, but the attorney does not consent to the recommended sanction) an evidentiary panel is appointed to hear the complaint. However, the respondent may elect (in writing, within 15 days) to have his/her complaint heard before a district court rather than an evidentiary panel.[19]

C Evidentiary Hearing vs. District Court

Evidentiary panels are composed of committee members, however, an evidentiary panel member may not have heard the complaint as a panel member at the investigatory level. It is noteworthy that at the evidentiary panel level the prosecutor's client is the Commission for Lawyer Discipline, while at the investigatory level their client is the panel hearing the case! (Which is why it is a violation of the TDRPC to contact a committee member directly, they are represented by counsel.) Evidentiary panel hearings are more formal than Investigatory hearings yet have the advantages of being less formal and generally less expensive than district court. Evidentiary panel proceedings are limited to the findings and conclusions of the investigatory panel. There is also limited discovery "in the discretion of the evidentiary panel"[20] and the Texas Rules of Civil Evidence are followed (although not strictly[2l)].

At the time the respondent is served with a complaint by the evidentiary panel (the evidentiary panel will serve the respondent with a complaint setting forth the charges against him/her to which the respondent has twenty days to respond 22) the respondent must also be served with a proposed hearing order setting forth: 1) a list of all witnesses expected to be called to testify; 2) a written summary of the issues of fact expected to be

contested; 3) a list of exhibits expected to be presented to the panel at the hearing; 4) written summaries of the testimony expected to be elicited from each witness; and 5) the estimated length of time for presenting the entire case to the panel. [23] The final hearing order may be amended for good cause shown at the discretion of the chair. (If the final hearing order differs from the order proposed by the respondent, the respondent may remove the case to a district court for a trial de novo within ten days.[24])

Additionally, the evidentiary panel must make findings of fact and conclusions of law and determine any sanctions within thirty-five days following the conclusion of the evidentiary hearirig.[25] The evidentiary panel's judgment is binding, although, it may be appealed to the Board of Disciplinary Appeals.[26]

The alternative to an evidentiary hearing, is a district court trial "de novo." Discovery is conducted at the district court level and the Texas Rules of Civil Evidence are followed just as they would be in any other matter before a district court. The fact finders are a jury of impartial people (upon demand by the respondent or the Commission, the complainant has no right to demand a jury trial[27]), rather than a panel composed of attorneys and laypersons volunteering for the State Bar that employs the prosecutor.

A disciplinary action must be set for trial no later than 180 days after the date the disciplinary petition[28] is filed with the district clerk.[29] Additionally, no motions for resetting, or agreed pass may be granted unless required by the interests of justice.[30] When a grievance is pursued at the trial level, the case may be bifurcated[31] as in a criminal case. Therefore, it would be the judge who would assess punishment, not the jury.[32]

D. Discipline

Discipline of an attorney may occur at either the investigatory or evidentiary/trial court levels. Disciplinary actions or "sanctions" may include: disbarment, resignation in lieu of disbarment, indefinite disability suspension, suspension for a certain term, probation, interim suspension, public reprimand and private reprimand.[33] (The sanction of disbarment is not available to the investigatory panel, however, it does become an option once the grievance reaches an evidentiary panel.) Additionally, sanctions may also require restitution or the payment of reasonable attorney's fees and all direct expenses associated with the proceedings.

II. NO DEFENSE IS THE WORST DEFENSE

Rule 2.09 Texas Rules of Disciplinary Procedure (TRDP) requires an attorney to respond to the allegations of a complaint within thirty days after receipt of the notice of the complaint. If a respondent needs additional time to answer a complaint, he/she should request an extension so that he/she will have additional time, yet still answer timely. In our experience, we have found the State Bar investigators to be very accommodating to reasonable requests for time extensions.

Responding to the complaint is not optional! Failure to respond is attorney misconduct, sanction able in its own right.[34] The number of attorneys who find themselves subject to discipline for the failure to respond to the grievance committee is astounding. What is particularly unfortunate about an attorney failing to respond, is that the original complaint may have only been a minor infraction resulting in a sanction such as a private

reprimand. By failing to respond, however, the original misconduct is compounded and the complaint results in a public reprimand or worse.

If an attorney does fail to timely answer a complaint, in some cases it is possible to request, and be granted, a motion to reconsider default.[35] Basically, this allows the respondent to "start over" and answer the complaint as if for the first time. However, the State Bar may not be willing to grant such a motion, so a respondent is much better off requesting an extension if possible. While it is understandable that an attorney may be aware that he/she has violated an ethical rule and believes that a sanction is unavoidable, failing to respond is the worst route for an attorney to take. Harsh penalties may be imposed for what otherwise would have been a less serious matter. An attorney who is intimidated by the thought of facing the grievance committee should obtain counsel. Ignoring the grievance process is never a solution.

While not all respondents in grievance matters need counsel, matters involving trust account violations, neglect, fraud, misappropriation of client funds and property, or excessive fees are cases in which a respondent should seriously consider retaining legal counsel. It is important to realize that having a grievance filed against an attorney is an emotional experience, especially for a respondent who believes he/she has done nothing wrong. Retaining counsel to provide guidance, even if the accused attorney represents himself/herself at the hearing, is advisable for the reason that even an excellent attorney will find it difficult to be objective when he/she is personally involved in a matter.

If you elect to have counsel represent you, get them involved as early as possible. Also, be certain to choose an attorney who has a good reputation among the bar members, as well as expertise in the grievance process. Robert E. Valdez, grievance committeeman, gave his perspective, "I want to be able to trust the respondent's lawyer - even if I do not trust the respondent. Under such circumstances a committee may be much more inclined to accept recommendations the attorney makes regarding sanctions available upon a finding of just cause."[36]

III. AVAILABLE DEFENSES

Even in situations which appear hopeless, there are several defenses which may be raised on behalf of an attorney faced with an ethical violation at the trial level. Keep in mind that a grievance panel must always act in accordance with the TRDP.37 Failure to comply with applicable rules and guidelines set forth by the State Bar may result in a denial of due process to an attorney, and possible grounds for dismissal of the complaint. Some of the seldom used defenses are:

a . Denial of Due Process - Special Disciplinary Counsel Program: The State Bar of Texas' Special Assistant Disciplinary Counsel Program constitutes a denial of due process; creates the appearance of impropriety; and violates the State Bar's mandates, guidelines, and special standards of conduct appropriate to prosecutors.[38] The Program provides volunteer trial attorneys, "Special Assistant Disciplinary Counsel," to prosecute attorney misconduct at the trial level under both prior disciplinary rules and procedures and the new Texas Rules of Disciplinary Procedure. Under the Program, services rendered by attorneys are entirely free. However, any attorneys fees awarded by the trial court are required to be remitted to the State Bar of Texas. This arrangement creates a

contingency interest for the State Bar in each and every case prosecuted through a Special Assistant Disciplinary Counsel.

The State Bar, although having incurred no attorneys fees, receives a windfall whenever attorneys fees are awarded. This expectation of a windfall gives the State Bar added incentive to vigorously prosecute disciplinary proceedings even in situations where the facts do not warrant such prosecution, or even continuing to pursue the matter. The rules governing the conduct of Special Assistant Disciplinary Counsel specify that a Special Prosecutor: "must not be subject to even the appearance of impropriety or disregard for either the disciplinary rules or the spirit of ethical behavior" (emphasis added).[39] As it is currently operates, the Program itself violates the State Bar's own mandates and guidelines, and the special standard of conduct appropriate to prosecutors.[40]

b. Denial of Due Process - Improperly Composed or Appointed Panel: The TRDP stipulate that a panel must be properly composed and that members are required to be properly appointed in accordance with the TRDP. Rule 2.02 specifies that "All committee panels must be composed of two-thirds attorneys and one-third public members." Rule 2.07 provides that "Panels must be composed of two attorney members for each public member." The ratio of attorneys to public members is set at 2:1. An improperly composed panel results in a failure to provide due process to the respondent.

Grievance committee members must also be legally appointed by the State Bar of Texas. It is arguable that a grievance committee has no legal authority to act if it is comprised of members who are not properly appointed. Therefore, it is important to obtain as much information as is possible (through the Texas Open Records Act) regarding committee members and their appointments.

c. Denial of Due Process - Fundamental Rights at the Hearing: The fundamental right to prove one's case fairly is essential to any administrative hearing and is not limited to court trials. Therefore, a respondent should be entitled to fully present his/her case to the investigatory or evidentiary panels. A denial or infringement of this opportunity arguably violates a respondent's right to due process under the law.

One example of the State Bar's denial of a fair opportunity for a respondent to present his/her case is illustrated in the "Information Sheet for Complainants, Respondents, and Witnesses Attending Just Cause Hearings." The instructions state "This is not a trial, either civil or criminal, and cross-examination is NOT allowed. If you have a question for the other party, you must direct it to the panel chair. The chair may then ask the opposing party if the chair considers the question appropriate."41 Taking a moment to imagine such a concept in a trial setting demonstrates how unfair this procedure is.

While the issue of whether or not due process requirements are met when an attorney is restricted in questioning his/her accuser or other witnesses appears to be one of first impression in Texas. Other jurisdictions confronted with similar restrictions have found that limited cross-examination fails to satisfy due process requirements.42

d. Disqualification of Panel Members: District committee members serve on panels, assigned by the committee chair, for investigatory and evidentiary hearings. A member must be disqualified from serving on a panel for either type of hearing if a district judge, under similar circumstances, would be disqualified.43 Grounds for disqualification are

generally waived if not brought to the attention of the panel within ten days of notification of the names and addresses of the panel members. However, grounds for disqualification do follow the discovery rule and may be asserted within ten days of when the grounds were or reasonably should have been discovered.44

e. Denial of Due Process - Trial de Novo: Although a respondent has the option of choosing a trial in district court instead of an evidentiary hearing, it is important to realize that the trial will not be "de novo." This is because the notion of a "trial from the beginning" has been eliminated by the Texas Disciplinary Rules of Professional Conduct (TDRPC). Rule 5.01(g) states "In accordance with Section 81.072 (11), Texas Government Code, the Commission adopts the following rules restricting the use of private reprimands by district grievance committees. Private reprimands shall not be utilized if-.

g. A disciplinary action has been initiated as a result of such misconduct."

This limitation on the trial court arbitrarily denies the respondent his/her right to the relief of a private reprimand by precluding the trial court from granting such relief if the court or a jury finds professional misconduct. The argument is that because the trial court level is a public forum a private reprimand is not feasible. However, the difference between the publicity given a small trial as opposed to the significantly increased level of publicity corresponding to the posting of a sanction is readily apparent. The denial of specific relief's available to a jury constitutes punishment before the respondent has had his/her day in court, resulting in a denial of due process and grounds for dismissal.45

f. Improper Proceedings: "All proceedings incident to the trial de novo must take place in the county of respondent's principal place of practice."46 This rule is violated if a court conducts proceedings or preliminary matters by phone and any party is outside of the county where the case was filed. (Of course, it would be necessary to have a recording made or a court reporter present to verify that the proceeding took place.)

IV. ATTORNEY V. ATTORNEY: BEWARE OF THE NEW STRATEGIC WEAPON

Under TDRPC 8.03 (a) "A lawyer having knowledge that another lawyer

has committed a violation of the rules of professional conduct raising a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority."

Grievances filed by attorneys against attorneys is an area that has not received much attention, to date. Currently, there are no statistics available to indicate exactly how many grievances are filed by attorneys pursuant to TDRPC 8.03, due to the fact that there is no inquiry made by the State Bar as to whether the written statement is being submitted by an attorney when the grievance is filed. However, within our practice of defending attorneys, this issue has arisen on several occasions, and appears to be occurring more frequently.

The comments to TDRPC 8.03 clarifies that "self-regulation of the legal profession requires that members of the profession initiate disciplinary investigations when they have knowledge not protected by TDRPC 1.05 (confidentiality of information) that a violation of

the TDRPC has occurred." It is further stated that an attorney should report conduct even if the existence of a violation is not yet established, because "frequently, the existence of a violation cannot be established with certainty until a disciplinary investigation has been undertaken." In addition, the rules clarify that "substantial" does not refer to the amount of evidence, but rather, the severity of the possible offense.

Essentially, attorneys are "obligated" to report conduct to the State Bar that they feel might be a violation of the TDRPC, even if they do not know for a fact that a violation has occurred or have significant evidence to support such a belief. While the need for self-regulation is clear, the dangers of exploiting this "obligation" (as attorneys often phrase it in their letters to the bar) as a strategic weapon are enormous.

The State Bar has addressed this issue to some extent under TDRPC 4.04 (a) and (b)(1) barring an attorney from presenting or threatening to present a disciplinary charge solely to gain an advantage in a civil matter. This rule provides some protection for attorneys, although how much is often a function of proof, especially given the minimal standard of proof required of an attorney as a basis for filing a grievance under TDRPC 8.03. Needless to say, what appears to be occurring more and more frequently is that as soon as attorney A files a grievance against attorney B, attorney B retaliates by filing a grievance against Attorney A for using the grievance system for strategic advantage.

Some additional protection for attorneys also lies in the confidentiality requirement of the grievance system. All information, proceedings, hearing transcripts, and statements coming to the attention of the investigatory panel of the Grievance Committee must remain confidential and may not be disclosed to any person or entity (excepting counsel for the parties and The Chief Disciplinary counsel) unless disclosure is ordered by the Court.47 Therefore, attorneys who inform their clients that they are filing a grievance against an opposing attorney (or any attorney) are in violation of the TDRPC and subject to discipline themselves. To some extent this confidentiality requirement may reduce the number of spurious complaints to please a client. However, there is some evidence that attorneys are not aware of this confidentiality requirement or at least fail to comply with it.

The self-regulation provision contained in the TDRPC is a necessary evil in maintaining the grievance system and is not likely to be eliminated. The unfortunate reality, however, is that the provision is being used as a strategic weapon by attorneys involved in litigation work. Therefore, an attorney should be aware that they are "obligated" to report misuse of the grievance system to the State Bar and that such misuse is a defense which may be raised in answering a complaint. In our experience defending attorneys involved in these types of situations, the two complaints tend to cancel each other out. Often, this is because it is extremely difficult for an investigatory panel to determine the intent behind an attorney filing a grievance against opposing counsel, and the inherent risks in allowing the grievance system to be used as a strategic weapon in litigation creates enormous potential for abuse.

V. PROTECT YOURSELF

A. Self-Help

1. Return phone calls promptly. 47.9% of 1995-1996 complaints alleged neglect - if your clients do not hear from you, they assume you are doing nothing.

2. Calendar your cases accurately. Failing to meet filing deadlines will not only earn you a grievance, but it is also a good way to build a malpractice case against yourself.

3. Check for conflicts. Now.

4. Do not promise your clients the stars and moon, you are only asking for trouble later. Be realistic, and get worried if they are not.

5. Keep accurate notes from client meetings. They may provide the grievance committee with evidence of what transpired, rather than just your word against your client's.

6. If you are dismissed by your client, cooperate fully with the new attorney. You must promptly surrender the file and any property of the client, even if they owe you money!

7. Always reduce your fee agreement to writing.

8. Keep client funds in a trust account, never commingle funds.

9. When you decline a case, do so promptly and in writing.

10. If served with a complaint by the State Bar, respond timely!

11. Familiarize yourself with the rules relating to advertising. This is an area fraught with potential for misconduct.

B. Examples of Barratry

The following descriptions of situations, which have actually occurred, are

all examples of barratry and are all illegal.48

1. An attorney sending pizzas to emergency room workers with his business card attached.

2. An attorney sending flowers to a hospitalized accident victim with his business card attached.

3. An attorney visiting a hospital as a priest, "ministering" to accident victims and handing out his business card.

4. An attorney paying an EMS worker to suggest that accident victims consult with the attorney.

5. An attorney offering to forgive a person's debt to him in exchange for that person's bringing accident victims to the attorney.

6. Attorneys paying tow-truck drivers to hand out their business cards at accident scenes.

7. Four attorneys and one secretary going to the scene of a school bus accident to "comfort" the victims and their parents.

VI. CONCLUSION

The basic flaw in the present "grief-ance" system is that once an attorney is summoned to an investigatory hearing, there is a built-in presumption that whatever the attorney did was wrong and whatever the complainant (usually the former client) says is true. In the most clear-cut of situations, an attorney probably does not need his own counsel, but a quick reading of the rules and the knowledge that a "hanging" mentality may permeate the hearing, should quickly jolt one to consider how much their law license is worth. A single violation is sufficient to bar you from ever practicing law again.

With the State Bar now participating in "sting" operations, a thorough knowledge of the ethical rules for your daily practice is essential. A working knowledge of how a complaint will be handled will save a lot of "grief' that one may have to endure because of greed, ignorance, or inattention. You can emerge a winner from the process but why run the race if you don't have to.

1 Texas Rules of Disciplinary Procedure [hereinafter "TRDP"] 1.06(c).

2 TRDP 4.06(a).

3 (See attached Exhibit 2)

4 1995-1996 total number of: written statements - 9,252; disciplines (final sanctions) - 575; written statements upgraded as complaints - 5,449; written statements dismissed - 3,903; elected evidentiary hearing - 50; elected district court 276. Percentage of: written statements upgraded - 58.9%; written statements dismissed 41.1%. State Bar of Texas, Office of the General Counsel. (1997).

5 See id.

6 "Every written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyerly, shall be promptly forwarded to the Office of the Chief Disciplinary Counsel." TRDP 2.09.

7 Id.

8 The Chief Disciplinary Counsel reviews every statement that appears to attempt to allege professional misconduct by a lawyer to determine whether it constitutes an inquiry or a complaint. TRDP 2.09. (See attached Exhibit 4)

9 TRDP 1.06(n).

10 "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 TDRPC; 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 TDRPC; 3) Violation of any disciplinary or disability order of judgment; 4) Failure of a Respondent to furnish information subpoenaed by a Committee, unless he or she, in good faith, asserts a privilege or other legal grounds for the failure to do so; 5) Engaging in conduct that constitutes barratry as defined by the law of this state; 6) Failure to comply with Section 13.01 of these rules relating to notification of an attorney's cessation of practice; 7) Engaging in the practice of law either during a period of suspension or when on inactive status; 8) Conviction of a Serious Crime, or being placed on probation for a Serious Crime with or without an adjudication of guilt; 9) Conviction of an Intentional Crime, or being placed on probation for an Intentional Crime with or without an adjudication of guilt. TRDP 1.06(q).

11 "Complainant" means the person, firm, corporation, or other entity initiating a Complaint or Inquiry. TRDP 1.06(e).

12 TRDP 2.09.

13 Margaret Reaves, The Grievance Process, San Antonio Lawyer, Winter 1994-1995 at 3.

14 A "complaint" is written material that, either on its face or upon screening or preliminary investigation, alleges professional misconduct, disability, or both. TRDP 1.06(f). (See attached Exhibit 5)

15 TRDP 2.09. Note that "all proceedings shall immediately be dismissed if the determination of the Chief Disciplinary Counsel is reversed and it is finally held that a statement does not constitute a Complaint."

16 (See attached Exhibit 1)

17 "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 by 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 1.06(p). (See attached Exhibit 6)

18 (See attached Exhibit 3)

19 TRDP 2.14. (See attached Exhibit 8)

20 Discovery is generally limited to a showing of good cause and substantial need. TRDP 2.16.

21 "The presiding member of the evidentiary panel 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 Civil Evidence." TRDP 2.16(h). Please note that no ruling by the panel "shall be a basis for reversal solely because it fails to strictly comply with the Texas rules of Civil Evidence." TRDP 2.16(h).

22 TRDP 2.16(b). "At the time of filing the responsive pleading, Respondent shall also file a proposed hearing order containing any modifications that the Respondent desires to make to the proposed hearing order filed by the Chief Disciplinary Counsel. Any failure to file such a responsive pleading and proposed hearing order within the time permitted constitutes default, and all facts alleged in the charging document shall be taken as true..."

23 TRDP 2.16(g).

24 TRDP 2.16(c).

25 TRDP 2.16(m). (See attached Exhibit 7)

26 Margaret Reaves, supra note 13 at 4.

27 TRDP 3.06.

28 TRDP 3.01. (See attached Exhibits 10 and 11)

29 TRDP 3.07.

30 Id.

31 "The trial court may, in its discretion, conduct a separate evidentiary hearing on the appropriate Sanction or Sanctions to be imposed." TRDP 3.10.

32 TRDP 3.09.

33 TRDP 1.06(t).

34 Failure to timely furnish a response, failure to furnish information requested by counsel or a grievance committee, or the failure to assert grounds for failure to do so constitutes professional misconduct for which an attorney may be disciplined upon the finding, at the hearing on the matter, that there is just cause to believe the attorney committed professional misconduct by failing to timely respond to the complaint. Texas Disciplinary Rules of Professional Conduct [hereinafter "TDRPC"] 8.01(b).

35 (See attached Exhibit 9)

36 Robert E. Valdez, The Grievance Committee Process: The Committee's Perspective, San Antonio Lawyer, Winter 1994-1995 at 10.

37 See TRDP 1.02.

38 Robert S. "Bob" Bennett, Elaine M. Adams and Thomas W. Houghton, Is the Fox Guarding the Chicken Coop? Texas Lawyer, July 29, 1996 at 24 [hereinafter "Bennett et al"]. (See attached Exhibit 12)

39 Texas Commission for Lawyer Discipline, Special Assistant Disciplinary Counsel Program [Guidelines], January 31, 1995 at 6. (See attached Exhibit 13)

40 Bennett et al., supra note 38.

41 Information Sheet for Complainants, Respondents, and Witnesses Attending Just Cause Hearings, Office of the General Counsel, State Bar of Texas (1997).

42 See Wadell v. Board of Zoning Appeals of City of New Haven, 136 Conn. 1, 68 A. 2d 152 (1949); E & E Hauling, Inc. v. County of Dupage, 77 Ill. App. 3d 1017, 33 111. Dec. 536, 396 N.E.2d 1260 (1979).

43 TRDP 2.06.

44 Id.

45 J.B. Advertising, Inc. v. Sign Board of Appeals, 883 S.W.2d 443 (Tex. App.--Eastland 1994, writ denied).

46 TRDP 3.03.

47 TDRPC 2.15.

48 Texas Young Lawyers Association Professionalism and Ethics Committee, Barratry and Attorney Advertising, State Bar of Texas: Choosing and Courting a Jury, (1997).