

# Supreme Court of Texas

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Misc. Docket No. 23-9067

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## Preliminary Approval of Amendments to Texas Rules of Disciplinary Procedure 1.06, 2.10, 2.17, 7.08, and 7.11

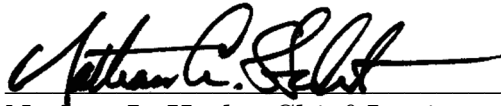
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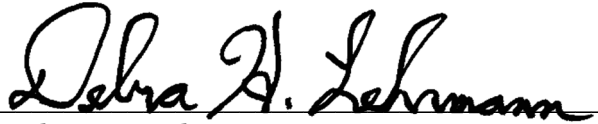
**ORDERED** that:

1. The Court invites public comments on proposed amendments to Texas Rules of Disciplinary Procedure 1.06, 2.10, 2.17, 7.08, and 7.11.
2. To effectuate the Act of May 17, 2023, 88th Leg., R.S., ch. 716 (H.B. 2384, codified at TEX. GOV'T CODE § 81.075(f)) and the Act of May 24, 2023, 88th Leg., R.S., ch. 1020 (H.B. 5010, codified at TEX. GOV'T CODE §§ 81.073 and 81.074), the amendments are effective September 1, 2023. But the amendments may later be changed in response to public comments. The Court requests public comments be submitted in writing to [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov) by December 1, 2023.
3. The amendments apply only to a grievance filed on or after September 1, 2023. The amendments to Rule 2.17 apply only to an application for a place on the ballot filed for an election ordered on or after September 1, 2023.
4. 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 this Order for publication in the *Texas Register*.

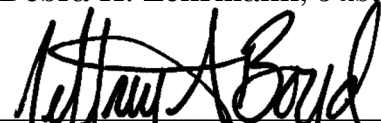
Dated: August 25, 2023.



Nathan L. Hecht, Chief Justice



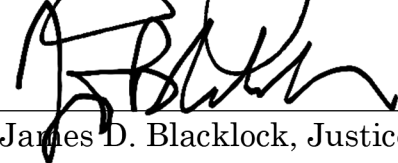
Debra H. Lehrmann, Justice



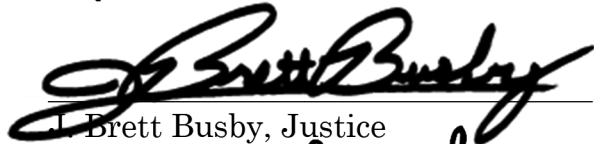
Jeffrey S. Boyd, Justice



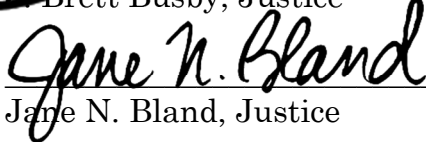
John P. Devine, Justice



James D. Blacklock, Justice



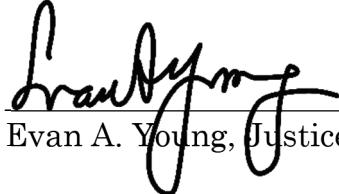
Brett Busby, Justice



Jane N. Bland, Justice



Rebeca A. Huddle, Justice



Evan A. Young, Justice

## TEXAS RULES OF DISCIPLINARY PROCEDURE

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### 1.06. Definitions:

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F. “Complainant” means the person, firm, corporation, or other entity, including the Chief Disciplinary Counsel, initiating a Complaint or Inquiry.

G. “Complaint” means ~~those written matters~~ a Grievance received by the Office of the Chief Disciplinary Counsel that:

1. \_\_\_\_\_ either on ~~the~~its face ~~thereof~~ or upon screening or preliminary investigation, alleges Professional Misconduct or attorney Disability, or both, cognizable under these rules or the Texas Disciplinary Rules of Professional Conduct; and

2. \_\_\_\_\_ is submitted by any of the following:

a. \_\_\_\_\_ a family member of a ward in a guardianship proceeding that is the subject of the Grievance;

b. \_\_\_\_\_ a family member of a decedent in a probate matter that is the subject of the Grievance;

c. \_\_\_\_\_ a trustee of a trust or an executor of an estate if the matter that is the subject of the Grievance relates to the trust or estate;

d. \_\_\_\_\_ the judge, prosecuting attorney, defense attorney, court staff member, or juror in the legal matter that is the subject of the Grievance;

e. \_\_\_\_\_ a trustee in a bankruptcy that is the subject of the Grievance; or

f. \_\_\_\_\_ any other person who has a cognizable individual interest in or connection to the legal matter or facts alleged in the Grievance.

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R. “Grievance” means a written statement, from whatever source, apparently intended to allege Professional Misconduct by a lawyer, or lawyer Disability, or both, received by the Office of the Chief Disciplinary Counsel.

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T. “Inquiry” means ~~any written matter concerning attorney conduct~~ a Grievance received by the Office of the Chief Disciplinary Counsel that, even if true, does not allege Professional Misconduct or Disability or is not submitted by a person listed in paragraph G.

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FF. “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.

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**2.10. Classification of Grievances:** The Chief Disciplinary Counsel shall within thirty days examine each Grievance received to determine whether it constitutes an Inquiry, 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.

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. The Respondent may, within thirty days after receipt of notice to respond, appeal to the Board of Disciplinary Appeals the Chief Disciplinary Counsel's determination that the Grievance constitutes a Complaint. If the Respondent perfects an appeal, the pendency of the appeal automatically stays the Respondent's deadline to respond to the Complaint and the deadlines pertaining to the investigation and determination of Just Cause. If the Board of Disciplinary Appeals reverses the Chief Disciplinary Counsel's determination, the Grievance must be dismissed immediately as an Inquiry. If the Board of Disciplinary Appeals affirms the Chief Disciplinary Counsel's determination, the Respondent must respond to the allegations in the Complaint within thirty days after the Respondent receives notice of the affirmance.

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.

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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 or an Investigatory Panel that heard the Complaint and must have at least three members but 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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P. Decision:

1.          After conducting the Evidentiary Hearing, the Evidentiary Panel shall issue a judgment within thirty days. In any Evidentiary Panel proceeding where Professional Misconduct is found to have occurred, such judgment shall include findings of fact, conclusions of law and the Sanctions to be imposed.

2.          The Evidentiary Panel may:

~~1.~~          a.          dismiss the Disciplinary Proceeding and refer it to the voluntary mediation and dispute resolution procedure;

~~2.~~          b.          find that the Respondent suffers from a disability and forward that finding to the Board of Disciplinary Appeals for referral to a district disability committee pursuant to Part XII; or

~~3.~~          c.          find that Professional Misconduct occurred and impose Sanctions.

3.          The Evidentiary Panel must impose a public sanction listed in Rule 1.06(FF)(1)-(7) against the Respondent if the Evidentiary Panel finds that the Respondent knowingly made a false declaration on an application for a place on the ballot as a candidate for the following judicial offices:

         a.          chief justice or justice of the supreme court;

- b. presiding judge or judge of the court of criminal appeals;
- c. chief justice or justice of a court of appeals;
- d. district judge, including a criminal district judge; or
- e. judge of a statutory county court.

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**7.08. Powers and Duties:** The Board of Disciplinary Appeals shall exercise the following powers and duties:

- A. Propose rules of procedure and administration for its own operation to the Supreme Court of Texas for promulgation.
- B. Review the operation of the Board of Disciplinary Appeals and periodically report to the Supreme Court and to the Board.
- C. Affirm or reverse a determination by the Chief of Disciplinary Counsel that a ~~statement~~Grievance constitutes either:
  - 1. an Inquiry as opposed to a Complaint; or
  - 2. a Complaint as opposed to an Inquiry.

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**7.11. Judicial Review:** An appeal from a determination of the Board of Disciplinary Appeals shall be to the Supreme Court. Within fourteen days after receipt of notice of a final determination by the Board of Disciplinary Appeals, the party appealing must file a notice of appeal directly with the Clerk of the Supreme Court. The record must be filed within sixty days after the Board of Disciplinary Appeals' determination. The appealing party's brief is due thirty days after the record is filed, and the responding party's brief must be filed within thirty days thereafter. Except as herein expressly provided, the appeal must be made pursuant to the then applicable Texas Rules of Appellate Procedure. Oral argument may be granted on motion. The case shall be reviewed under the substantial evidence rule. The Court may affirm a decision on the Board of Disciplinary Appeals by order without written opinion. Determinations by the Board of Disciplinary Appeals that a statement constitutes either an Inquiry or a Complaint, or transferring cases, are conclusive, and may not be appealed to the Supreme Court.

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