

Greetings!



MILITARY *and* VETERANS
LAW SECTION

SECTION of the STATE BAR of TEXAS

The Military and Veterans Law Section of The State Bar of Texas

HOLIDAY INN EXPRESS AND SUITES

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The New SBOT Sunset Legislation (SB 302): How It Will Impact Grievances, Complaints, and the General Practice of Law

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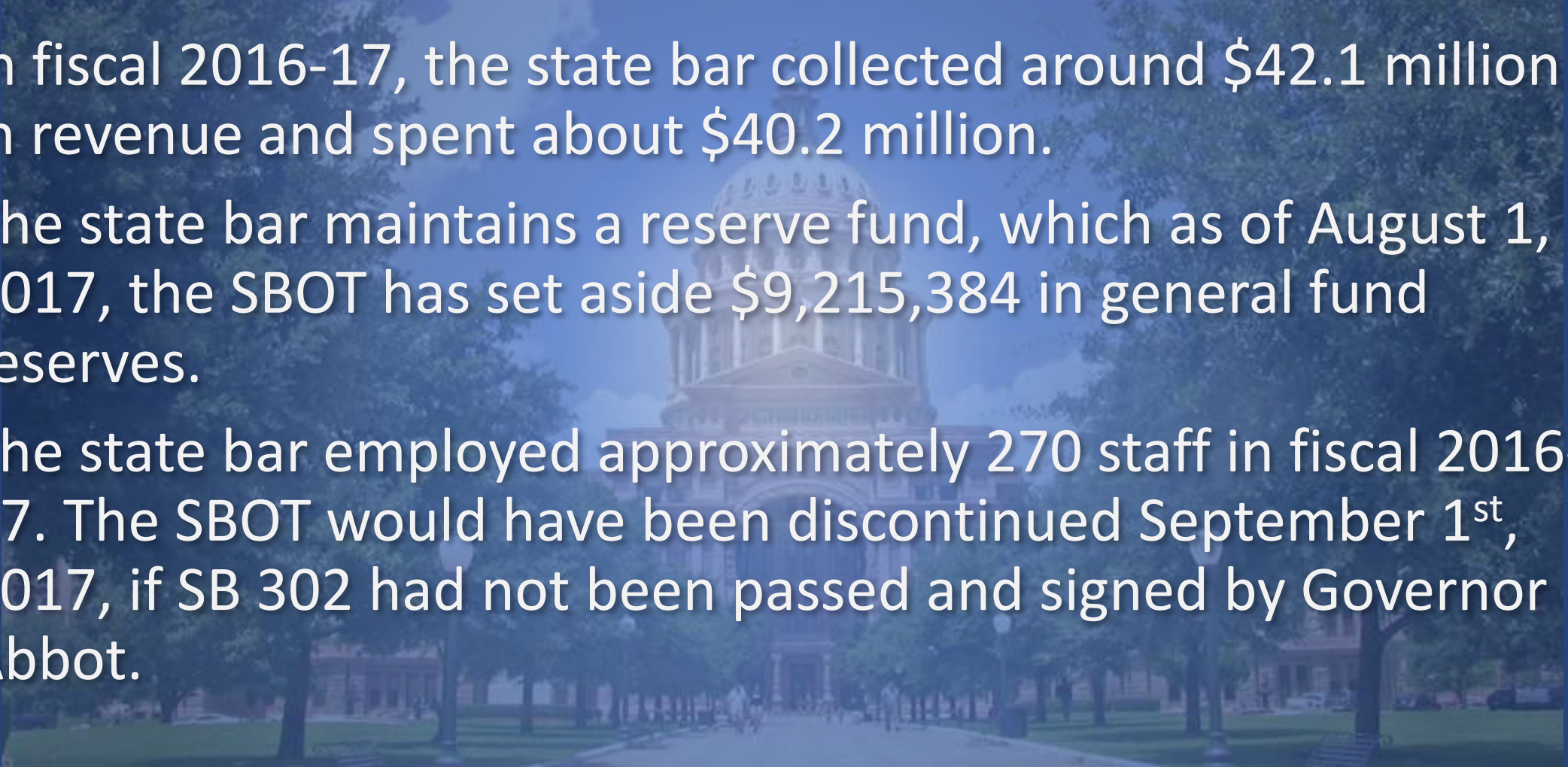
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Re: State Bar of Texas – “Big Business”

- In fiscal 2016-17, the state bar collected around \$42.1 million in revenue and spent about \$40.2 million.
- The state bar maintains a reserve fund, which as of August 1, 2017, the SBOT has set aside \$9,215,384 in general fund reserves.
- The state bar employed approximately 270 staff in fiscal 2016-17. The SBOT would have been discontinued September 1st, 2017, if SB 302 had not been passed and signed by Governor Abbott.



Thomas Watkins, Former Member Commission for Lawyer Discipline

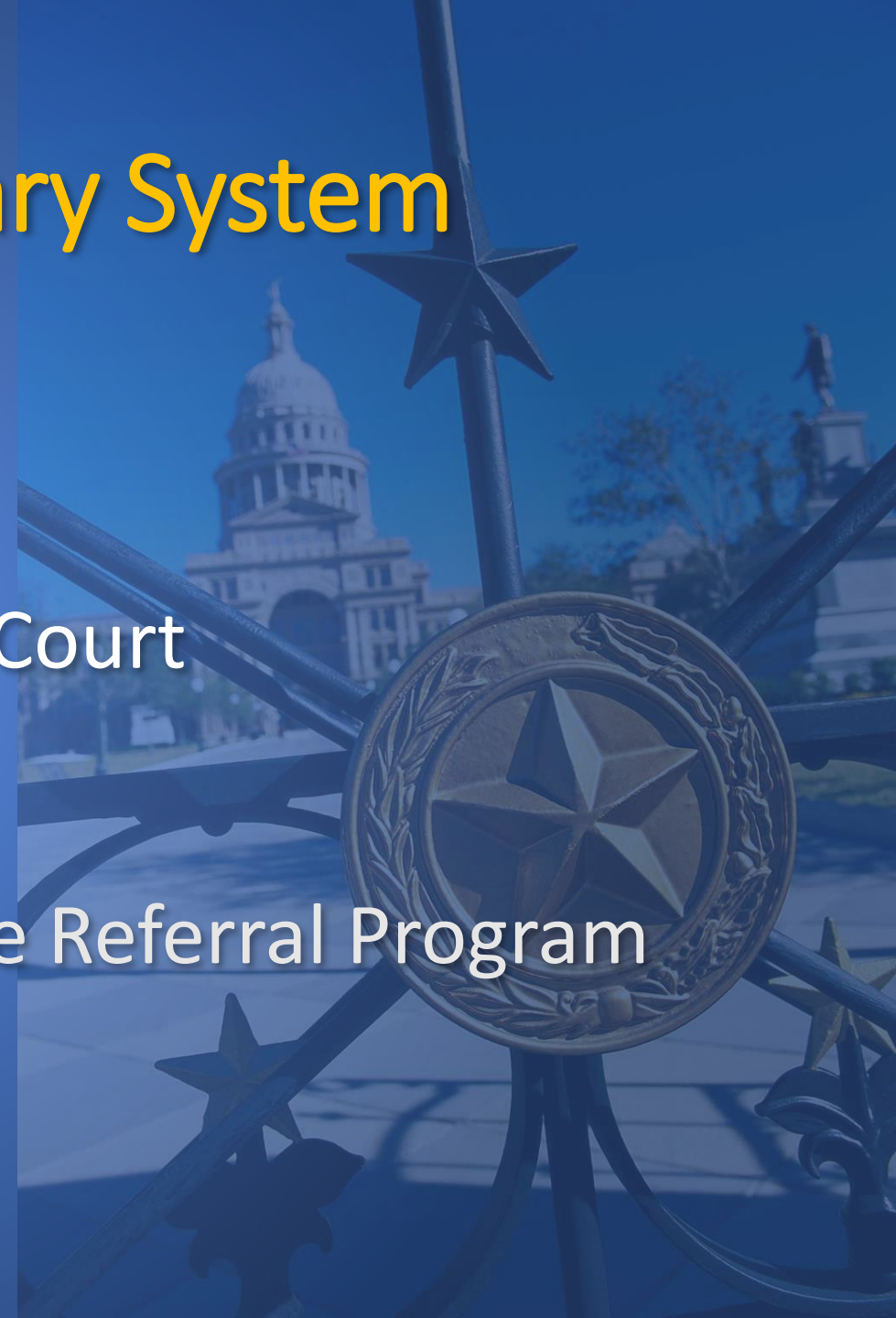
- Estimates that every new attorney licensed after 1999 will have at least two disciplinary complaints filed against them during their career.
- “Texas has one of the most complicated and expensive systems for handling grievance in the country.”

Thomas Watkins, Former Member Commission for Lawyer Discipline

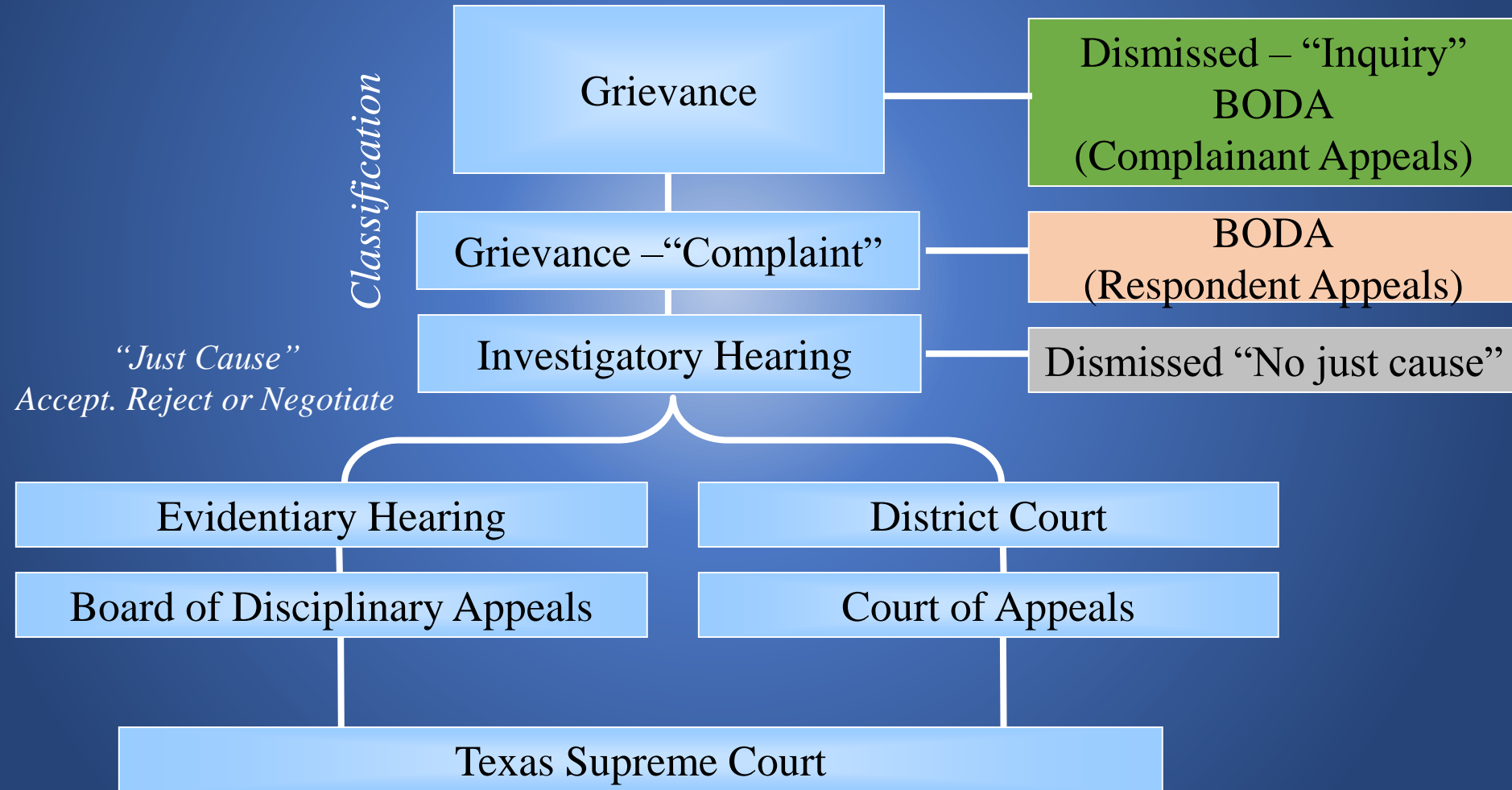
- Expensive - Lawyers are spending approx. \$8 million a year to handle around 9,000+ inquiries.
- Complicated – Watkins was in various positions in the system for 15+ years and admitted that he still does not understand the flow chart of how a complaint moves through the process.

The Present Disciplinary System

- Inquiry vs. Complaint
- Investigation By The OCDC
- Evidentiary Hearing / Civil District Court
- BODA / Supreme Court
- Punishment ranges from Grievance Referral Program to Disbarment

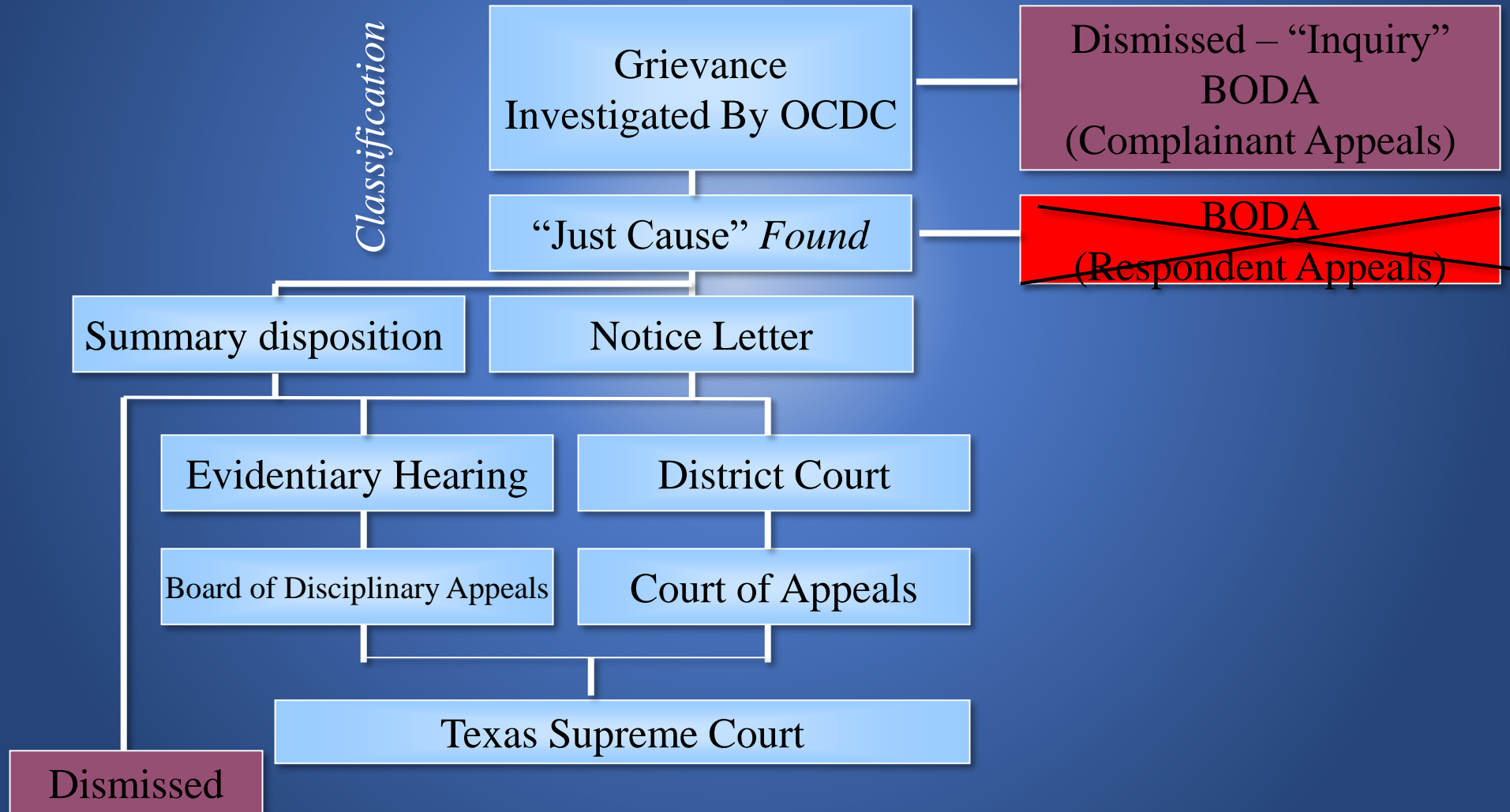


State Bar of Texas Attorney Disciplinary System (Prior 2004)

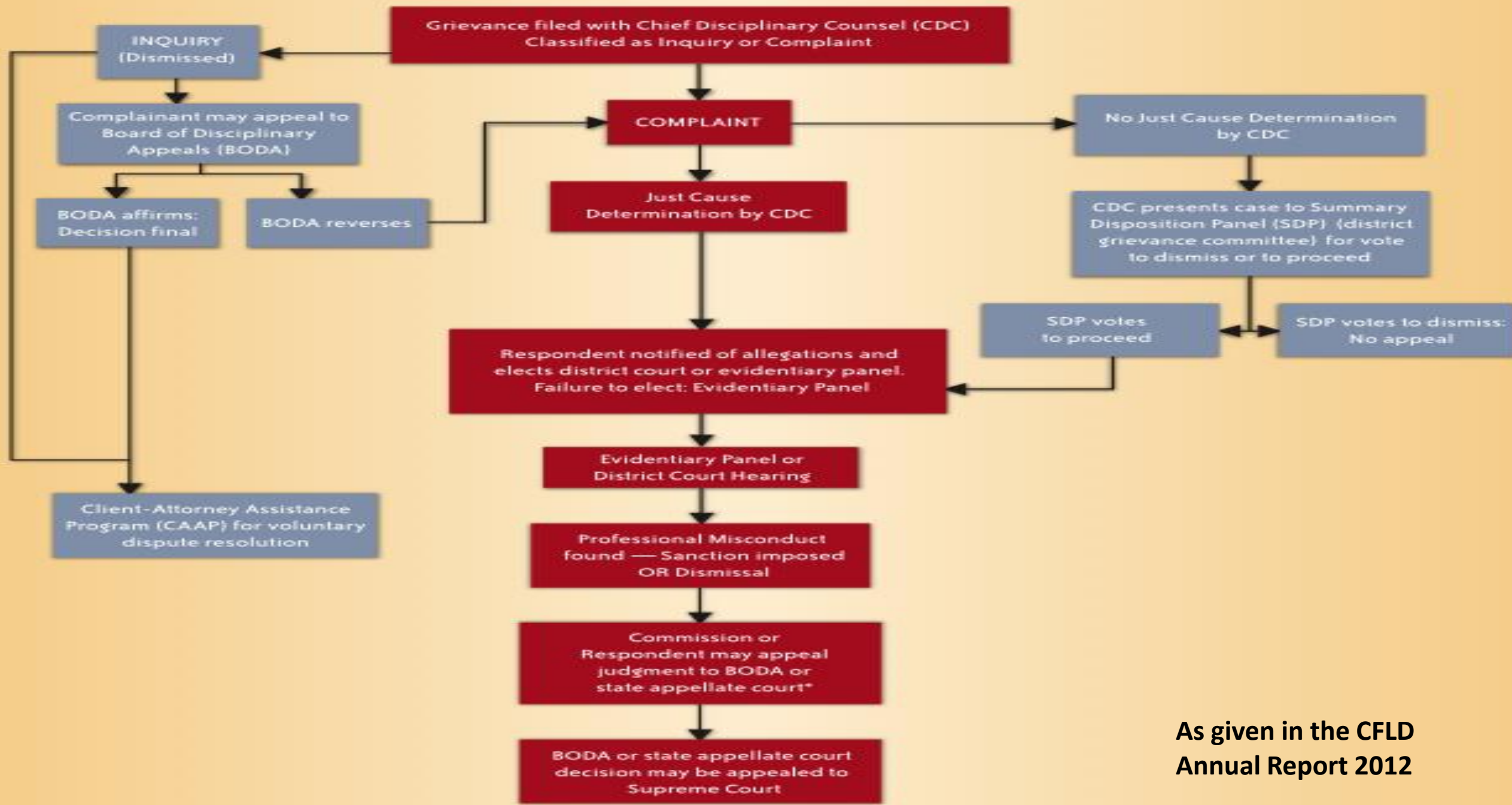


State Bar of Texas

Attorney Disciplinary System (After 2004)



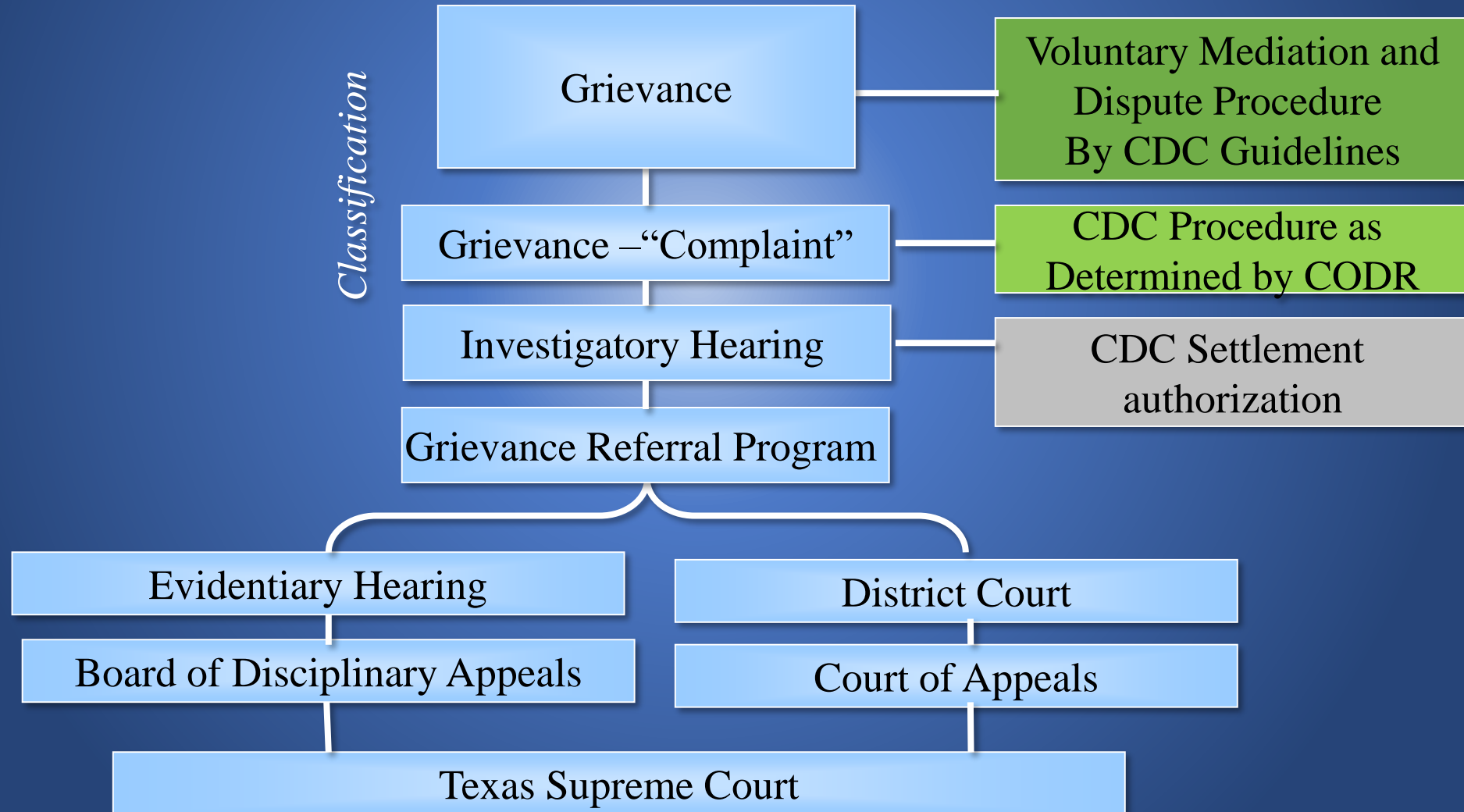
— PROCESSING A GRIEVANCE —



As given in the CFLD
Annual Report 2012

State Bar of Texas - Effective March 2018

Attorney Disciplinary System In Action





Legislation Changes in Legislative Session 85(R)

Effective September 1st , 2017

1. Committee on Disciplinary Rules

- SB 302 85R, Sec. 81.0872, establishes the Committee on Disciplinary Rules—consisting of nine members:
- three attorneys appointed by the president of the state bar;
- one nonattorney public member appointed by the president of the state bar;
- four attorneys appointed by the supreme court;
- one nonattorney public member appointed by the president of the supreme court.
- FUNCTION is to oversee the initial process for proposing a disciplinary rule under Section 81.0875.

2. CDC Settlement Authority

Added in Sec. 81.081:

- The CDC shall develop a process to identify a complaint that is appropriate for settlement attempt or an investigatory hearing before a trial is requested or the complaint is placed on a hearing docket.
- The CDC may **authorize a settlement at any time** during the disciplinary process.



Added in Sec. 81.086:

- The CDC may hold investigatory and disciplinary hearings by teleconference.

3. Establishing Minimum Standards and Procedures

Sec. 81.072 is amended by (b-3) as follows:

- In establishing minimum standards and procedures for the attorney disciplinary and disability system, the supreme court must ensure that an attorney has an opportunity to respond to all allegations of alleged misconduct.



***Are attorney rights and due process
being protected?***

4. Ombudsman For Attorney Discipline System

The ombudsman will:

- (1) review grievances
- (2) receive complaints about the system
- (3) receive and investigate complaints
- (4) answer questions from the public
- (5) assist members of the public wishing to submit a lawyer grievance
- (6) make recommendations to the board of directors and the supreme court for improvements



WOULD YOU WANT
THIS JOB?

5. Barratry—Improper Solicitation

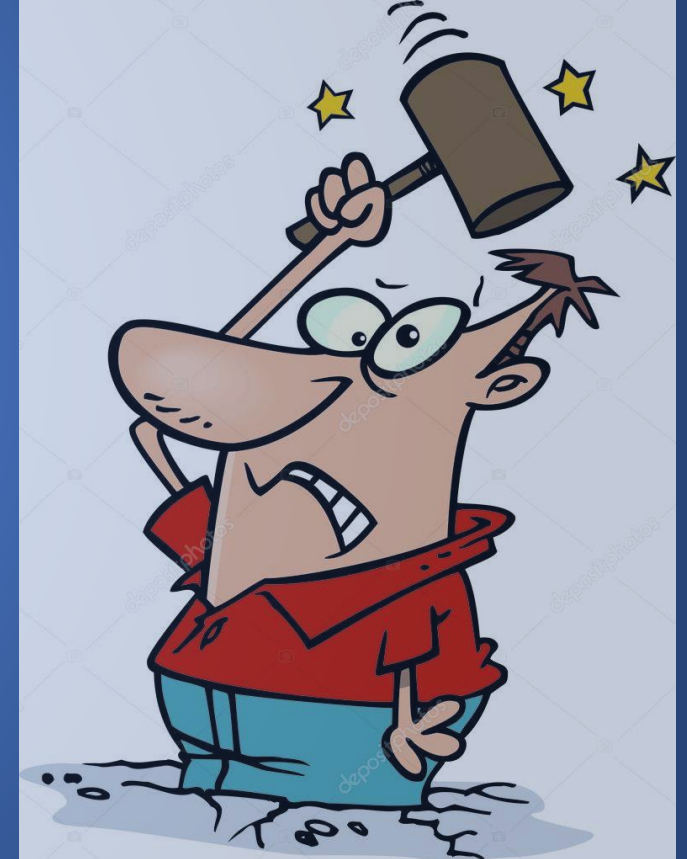
The chief disciplinary counsel's cooperation with local, state, or federal agencies in the investigation or prosecution of civil actions or criminal offenses related to barratry, including the number of grievances the chief disciplinary counsel referred to or received from a law enforcement agency.



6. Attorney Self Reporting

The CDC shall develop guidelines and a procedure for an attorney to self report:

- Any *criminal* offenses committed by the attorney; and
- Any disciplinary action taken by another state's bar against the attorney.



7. National Lawyer Data Bank

- Added by Sec. 81.085, the CDC will regularly search the National Lawyer Regulatory Data Bank maintained by the American Bar Association to identify a member of the state bar who is disciplined in another state.

8. Online Attorney Profiles

- Added to Sec. 81.115, an attorney's profile must now include a link on the attorney's online profile to the full text of the disciplinary judgment entered by a district grievance committee or district judge.



9. New Sanction Guidelines

Added by Sec. 81.083:

The chief disciplinary counsel shall propose and the supreme court shall adopt by rule sanction guidelines to:

- (1) associate a specific rule violation or ethical misconduct with a range of appropriate sanctions;
- (2) provide aggravating and mitigating factors that justify deviating from the established sanctions; and
- (3) provide consistency between complaints heard by a district grievance committee and complaints heard by a district court.

The chief disciplinary counsel shall ensure that interested parties are provided an opportunity to comment on the proposed sanction guidelines.

Federal Criminal Guidelines?

10. Teleconferences

Added by Sec. 81.086:

- The CDC may hold investigatory and disciplinary hearings by teleconference.



11. Issuance Of Subpoena; Objection

- Added by Sec. 81.080. ISSUANCE OF SUBPOENA; OBJECTION:
- (a) On approval of the presiding officer of the appropriate district grievance committee, the chief disciplinary counsel may, during an investigation of a grievance, issue a subpoena that relates directly to a specific allegation of attorney misconduct.
- (b) The chief disciplinary counsel shall provide a process for a respondent to object to a subpoena issued.



12. Fingerprint-Based Criminal Record

This bill would allow the state bar to keep these fingerprint-based criminal history records on file forever, which could amount to a government monitoring system imposed through occupational licensing, according to the HRO.



Evidentiary Hearing

- Evidentiary Hearing or Civil Court Trial
- Private reprimand only available if administrative procedure followed



Civil Jury Trial

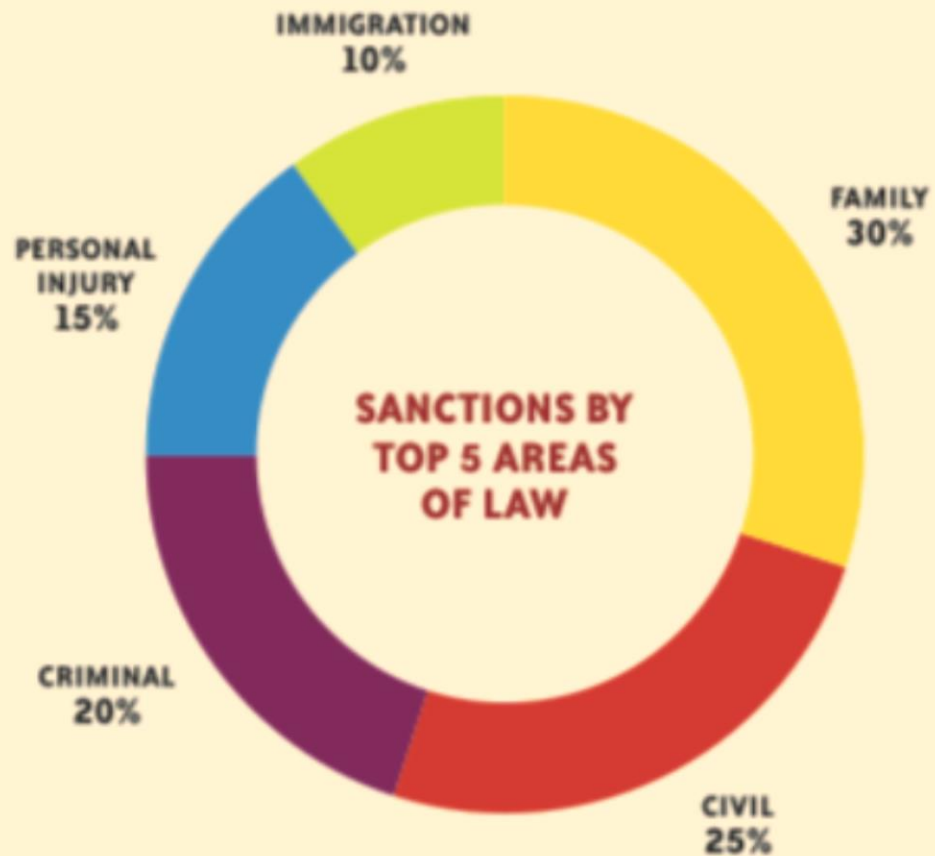
- Civil Rules of Procedure & Evidence apply
- No private reprimand available



Most Common Rule Violations

Under Current Legislation

STATISTICAL DATA



Provided by the State Bar Report of
the CLD, 2016-2017

Violations: Communication – 28%

1.03: Communication

(a) A lawyer shall keep a client reasonably informed about the status of a matter and properly comply with reasonable requests for information

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Violations: Integrity – 27%

8.01: Bar Admission, Reinstatement, and Disciplinary Matters

8.02: Judicial and Legal Officers

8.03: Reporting Professional Misconduct

8.04: Misconduct

8.05 Jurisdiction

Violations: Neglect – 17%

1.01: Competent and Diligent Representation

(b) In representing a client , a lawyer shall not:

(1) Neglect a legal matter entrusted to the lawyer; or

(2) Frequently fail to carry out completely the obligations

that the lawyer owes to a client or clients.

(c) As used in this Rule “neglect” signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients.

Violations: Declining or Terminating Representation – 15%

- 1.15(d): Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, **surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.**

Violations: Safeguarding Property – 13%

- Being Responsible in Trust Account Management
- Safeguarding Client Property

Violations: Conflicts – <1%

1.06 Conflict of Interest: General Rule

1.07 Conflict of Interest: Intermediary

1.08 Conflict of Interest: Prohibited Transaction

1.09 Conflict of Interest: Former Client

Violations: Fees – <1%

- Illegal or Unconscionable Fee
- Contingency Fees
- Division of a Fee
- Refundable vs. Non-Refundable Retainers

Violations: Advertising & Solicitation – <1%

- Lawyer Advertising is regulated by Part VII of the Texas Disciplinary Rules of Professional Conduct.
- Regulations are implemented and enforced by the Advertising Review Committee and the Advertising Review Department of the State Bar of Texas.
- Purpose: To protect the public from lawyer advertising that is false, misleading or deceptive.

Violations: Tribunals – <1%

- 3.01: Meritorious Claims and Contentions
- 3.02: Minimizing the Burdens and Delays of Litigation
- 3.03: Candor Towards the Tribunal
- 3.04: Fairness in Adjudicatory Proceedings
- 3.05: Maintaining Impartiality of Tribunal
- 3.06: Maintaining Integrity of Judicial System

Violations: Non-Client Relationships – <1%

4.01: Truthfulness in Statements to Others

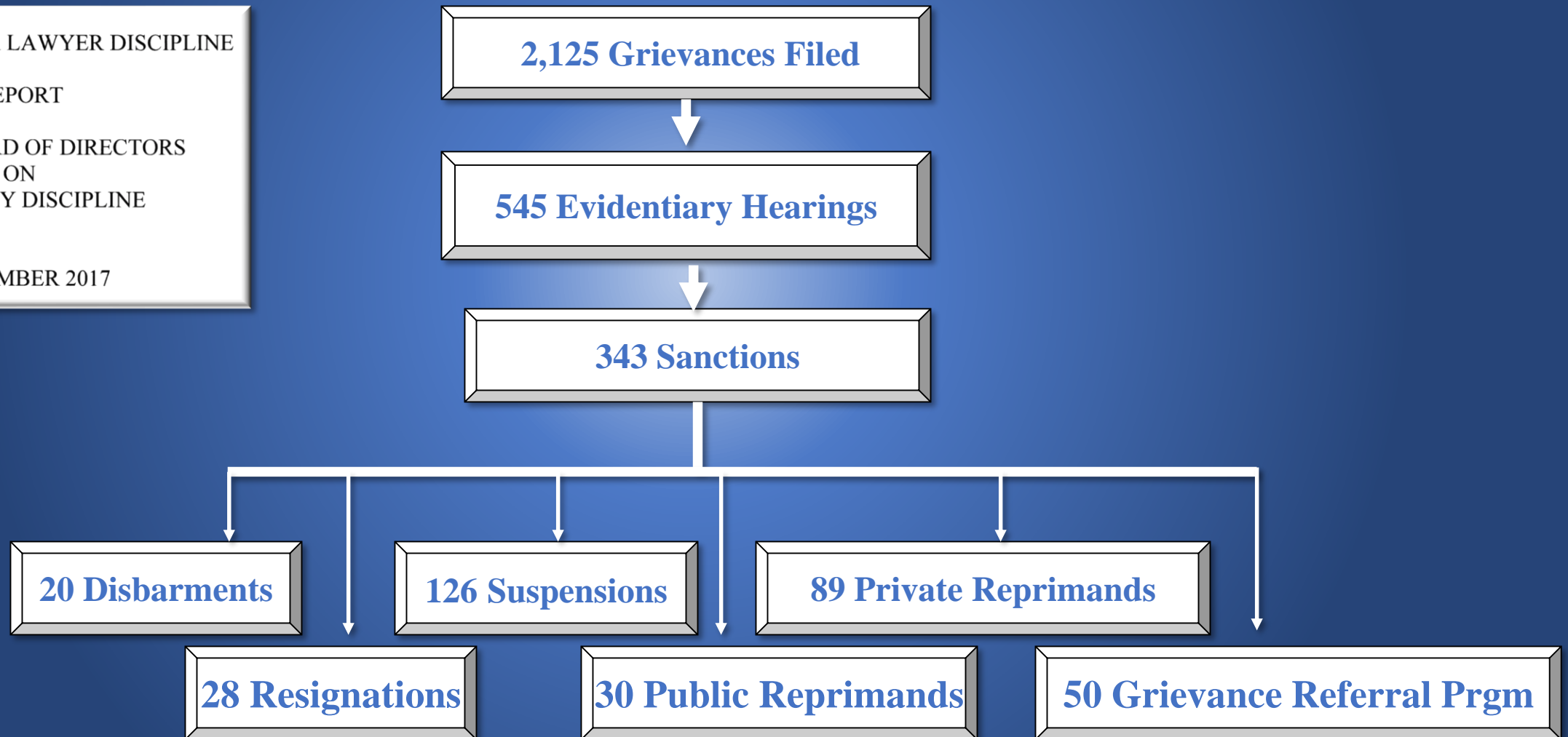
4.02: Communication with One Represented by Counsel

4.03: Dealing with Unrepresentative Person

4.04: Respect for Rights of Third Persons

Total Sanctions: 2016-2017

COMMISSION FOR LAWYER DISCIPLINE
REPORT
TO THE BOARD OF DIRECTORS
ON
ATTORNEY DISCIPLINE
SEPTEMBER 2017



Protections For Attorneys

1. Use the ethics Helpline.

SBOT Ethics Helpline 1-800-532-3947

2. Review Written Ethics Opinions

3. Know the Advertising Rules

4. Keep Client files

5. Keep Telephone Logs – MyCase

6. Maintain Written Records - MyCase

*As Provided by the Texas Center
For Legal Ethics

Protections For Attorneys

- 7. Keep Your Client Fully Informed
- 8. Return Phone Calls Promptly
- 9. Do Not Engage Sex With Client
- 10. Use Your Local Bar Association's Fee Dispute Committee
- 11. Train Your Staff
- 12. Take Advantage of Bar Resources
- 13. Beware of Substance Abuse and Stress
- 14. Maintain Professional Relationships

*As Provided by the Texas Center
For Legal Ethics

Handling a Grievance

- Take it seriously – You may be convinced that you did nothing wrong, but the CDC may see things differently.
- Prepare a thorough response – Under the new system, a thorough response is even more important, since there is not investigatory hearing.

Resources For Ethics

Sources for help with ethics questions:

1. State Bar of Texas Ethics Hotline. 1-800-532-3947
2. Texas Center for Legal Ethics.
(<http://www.legalethictexas.com/Home>)
3. University of Houston Law Center – Texas Ethics Reporter.
(<http://www.law.uh.edu/libraries/ethics/>)
4. State Bar of Texas Advisory Network.
(<http://www.texasbar.com/AM>)
5. Cornell University Legal Information Institute.
(https://www.law.cornell.edu/wex/legal_ethics)

Recent Developments in Implementations

- In addition to the Commission for Lawyer Discipline, the State Bar's DCAAP committee reviewed and approved the proposed rules for submission to the Supreme Court, as well as the State Bar Board of Directors at its recent meeting in San Antonio.
- The proposed rules were also submitted to the Bar membership for comment which have been forwarded to the Supreme Court. The Supreme Court will consider the proposals and is expected to adopt rules by March 1, 2018, with an anticipated effective date of June 1, 2018.

Recent Developments in Implementations

- The committee members for the new rules committee have been appointed. The Ombudsman is anticipated to be in place in June.
- According to the Office of the Chief Disciplinary Counsel—Austin, these measures are to be expected early 2018. March was the target date, and much of this new legislation requires meeting compliance standards.
- For broader changes, such as the fingerprint-based criminal history record check, the implementation timeline should be long enough to ensure that the state bar could fully comply.

Final Thought

- Get Help! Visit the Lawyers Assistance Program
- You should look into *Compliance Programs*
- A Grievance can mean serious business. You shouldn't try to do it alone.
- Remember – A lawyer who represents himself has a fool for a client.

Facebook site, *Texas Lawyers Care* – Bob Bennett