

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 04- 9153

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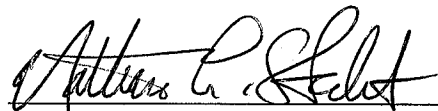
AMENDMENTS TO  
THE COMMISSION FOR LAWYER DISCIPLINE  
INTERNAL OPERATING RULES

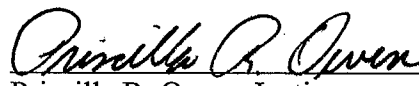
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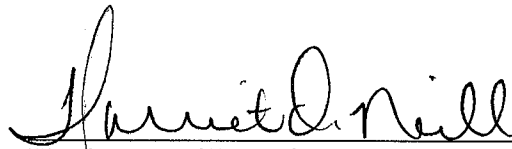
IT IS ORDERED that the Commission for Lawyer Discipline Internal Operating Rules are amended as attached. The effective date of these changes is the date of entry of this order. The Rules are to be published in the Texas Bar Journal as soon as practicable.

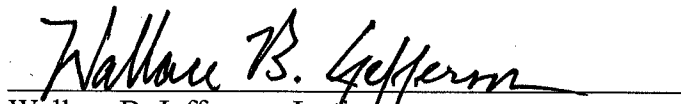
SIGNED AND ENTERED this the 17<sup>th</sup> day of August, 2004.

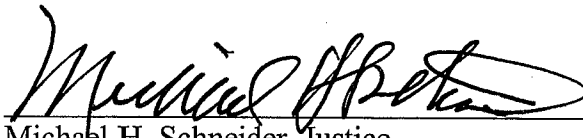
  
Thomas R. Phillips, Chief Justice

  
Nathan L. Hecht, Justice

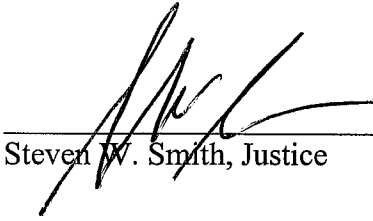
  
Priscilla R. Owen, Justice

  
Harriet O'Neill, Justice

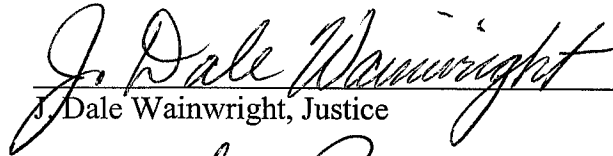
  
Wallace B. Jefferson, Justice



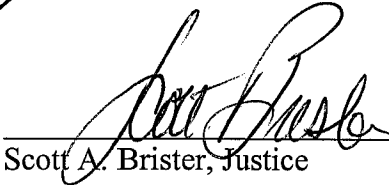
Michael H. Schneider, Justice



Steven W. Smith, Justice



J. Dale Wainwright, Justice



Scott A. Brister, Justice

# COMMISSION FOR LAWYER DISCIPLINE

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## *INTERNAL OPERATING RULES AND PROCEDURES*

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1. **COMPOSITION.** The Commission for Lawyer Discipline is a permanent committee of the State Bar and is not subject to dissolution by the Board under Article VIII of the State Bar Rules. The Commission is composed of twelve (12) members. Six (6) members shall be attorneys licensed to practice law in the State of Texas and in good standing as members of the State Bar. Six (6) members shall be public members who have, other than as consumers, no interest, direct or indirect, in the practice of law or the profession of law. No person may serve as a member of the Commission while he or she is a member of a District Grievance Committee, an officer or Director of the State Bar, an employee of the State Bar, or an officer or director of the Texas Young Lawyers Association; provided, however, the Chairman of the Board of the State Bar shall appoint a Director of the State Bar as an advisor to serve as a liaison to the Commission and a Director of the State Bar as an alternate advisor to serve as a liaison to the Commission, and the President of the Texas Young Lawyers Association shall appoint a director of the Texas Young Lawyers Association as an advisor to serve as a liaison to the Commission. Members of the Commission and its advisors will be compensated for their reasonable, actual, and necessary expenses, and members, but not advisors, will be compensated for their work as determined by the Board to be appropriate.

2. **APPOINTMENT AND TERMS.** Except for initial appointments as set forth in Section 4.03 of the Texas Rules of Disciplinary Procedure, Commission members will serve three (3) year terms unless sooner terminated through disqualification, resignation, or other cause. Terms begin on September 1 of the year and expire on August 31 of the third year thereafter. The lawyer members of the Commission are appointed by the President of the State Bar, subject to the Board's concurrence, no later than June 1 of the year. The public members are appointed by the Supreme Court of Texas no later than June 1 of the year. Members may be removed by the Supreme Court for good cause. Vacancies are to be filled in the same manner as term appointments but are only for the unexpired term of the position vacated. Members of the Commission are not eligible for reappointment to more than one (1) additional three (3) year term.

3. **OATH OF COMMISSION MEMBERS.** As soon as possible after appointment, each newly appointed member of the Commission shall take the following oath to be administered by any person authorized by law to administer oaths:

"I do solemnly swear (or affirm) that I will faithfully execute my duties as a member of the Commission for Lawyer Discipline, as required by the Texas Rules of Disciplinary Procedure, and will, to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of the State of Texas. I further solemnly swear (or affirm) that I will keep secret all such matters and things as shall come to my knowledge as a member of the Commission for Lawyer Discipline arising from or in connection with each Disciplinary Action and Disciplinary Proceeding unless permitted to disclose the same in accordance with the Rules of Disciplinary Procedure or unless ordered to do so in the course of a judicial proceeding or a proceeding before the Board of Disciplinary Appeals. I further solemnly swear (or affirm) that I have neither directly nor indirectly paid, offered, or promised to pay, contributed any money or valuable thing, or promised any public or private office to secure my appointment. So help me God."

4. **MEETINGS.** The Commission shall meet monthly or at such other times, in such places, and for such periods of time as the business of the Commission requires. Meetings are convened at the call of the Chair. Timely notice of all Commission meetings shall be sent to all members in advance. Seven members shall constitute a quorum of the Commission, except that a panel of three members may consider such matters as may be specifically delegated by the Chair, or, in the absence of the Chair, the Vice-Chair, of the Commission. The Commission and each of its panels may act only with the concurrence of a majority of those members present and voting. Members participating in either Commission or panel meetings by telephone or videoconference shall be deemed to be present. In any event in which the Commission shall conduct business in a panel of three members, at least one member shall be a public member and one member shall be an attorney member of the Commission. Any member of a panel shall have the right to refer a matter back to the Commission for action. In any instance where the Commission or a panel of the Commission is conducting its business by telephone conference or videoconference, any action taken must be reduced to writing and signed by each participant certifying the accuracy of the written record of the action taken.

5. **APPEARANCES.** Interested parties are welcome to attend any portion of a meeting of the Commission which the Commission designates as open to the public; however oral presentations or argument by a Complainant, Respondent or their respective representatives shall not be permitted.

6. **ATTENDANCE.** Members of the Commission are expected to attend all meetings of the Commission. Three (3) unexcused absences in a calendar year shall constitute good cause for removal of such member.

7. **RULES OF PROCEDURE.** The meetings of the Commission shall be generally conducted pursuant to Roberts Rules of Order. Rulings of the Chair with respect to parliamentary procedure shall be final.

8. **AGENDA.** A member of the Commission who desires to have any matter considered by the Commission may request that the Chair place the item on the next Commission agenda. If reasonably related to the authority and duties of the Commission, the Chair shall place the item on the next Commission agenda for consideration.

9. **MINUTES.** Minutes shall be kept of all Commission proceedings. Minutes shall be prepared within a reasonable time after each Commission meeting. All motions voted on shall be reflected in the minutes.

10. **DISQUALIFICATION.** No member of the Commission shall represent or counsel any Complainant or Respondent or serve as a consultant with respect to any Disciplinary Action or Disciplinary Proceedings initiated or pending during the member's term on the Commission.

11. **RECUSAL.** A member of the Commission shall recuse himself or herself from any discussion and voting in any matter in which the member or any person associated with the member's firm:

- A. Represents or has represented either the Complainant, Respondent or any adverse party in any current or related matter;
- B. Is related within the third degree of affinity or consanguinity to the Complainant, Respondent, any adverse party or any material witness;
- C. Has advised or assisted the Complainant, Respondent or any adverse party in the matter or any other related matter;
- D. Has personal knowledge of material facts related to the matter;
- E. Has a business, professional or other close personal relationship with the Complainant, Respondent, any adverse party or any material witness; or
- F. Knows of any other reason why he or she should not participate in deliberations or voting with respect to the matter.

12. **SPOKESPERSON.** No member of the Commission or any other person is authorized to bind the Commission without its specific authorization, except as may be provided for in these rules, the Texas Rules of Disciplinary Procedure, applicable law, or orders of the Supreme Court of Texas. The Chair of the Commission serves as its spokesperson in public statements concerning positions taken by the Commission, its policies, and decisions. The Chair may, as needed, designate another person to serve as spokesperson.

13. **LIMITATIONS ON THE USE OF PRIVATE REPRIMANDS.** 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:

- A. A private reprimand has been imposed upon the Respondent within the preceding five (5) year period

for a violation of the same disciplinary rule; or

B. The Respondent 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

C. The misconduct includes theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or

D. The misconduct has resulted in substantial injury to the client, the public, the legal system or the profession; or

E. There is likelihood of future misconduct by Respondent; or

F. The Respondent's misconduct was an intentional violation of the Texas Disciplinary Rules of Professional Conduct or, if applicable, the Texas Code of Professional Conduct; or

G. A Disciplinary Action has been filed as a result of such misconduct.

14. **PRO BONO ASSISTANCE.** Special Assistant Disciplinary Counsel may be appointed by the Commission to handle specific Disciplinary Actions and Disciplinary Proceedings. Special Assistant Disciplinary Counsel will operate in cooperation with the Chief Disciplinary Counsel's office and will be reimbursed for reasonable litigation-related expenses, but not for their own time or for services provided by their own employees.

15. **GENERAL POLICY.** The Chief Disciplinary Counsel shall seek, in accordance with Commission policy, the recovery of reasonable attorney's fees and all direct expenses, including court costs, associated with Disciplinary Actions and Disciplinary Proceedings, where the same is permitted by law. An exception to this policy may be granted only with the express consent of the Commission and only in cases where to seek such a recovery would be inequitable under the circumstances.

16. **PRESERVATION OF APPEAL RIGHTS.** The Chief Disciplinary Counsel shall take all actions necessary, including the filing of motions and notices, to preserve the Commission's ability to decide whether an appeal should be taken in a particular matter.

17. **CONTINUANCES.** No offer of settlement received by the Chief Disciplinary Counsel shall alone justify a continuance in the trial or hearing of any Disciplinary Action or Disciplinary Proceedings.

18. **POLICY ON DISQUALIFICATION.** Former counsel employed by the Chief Disciplinary Counsel shall be disqualified from representing Respondents only if he/she would be disqualified under the Texas Disciplinary Rules of Professional Conduct.

19. **DEFINITIONS.** All words used herein that are defined in the Texas Rules of Disciplinary Procedure shall have the same meaning herein as in the Texas Rules of Disciplinary Procedure.