



Everyday Ethicist: City Attorney responsibilities under the Texas Disciplinary Rules of Professional Conduct



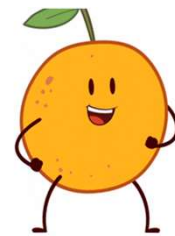
Riley Fletcher Conference - February 6, 2026

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C Rules!



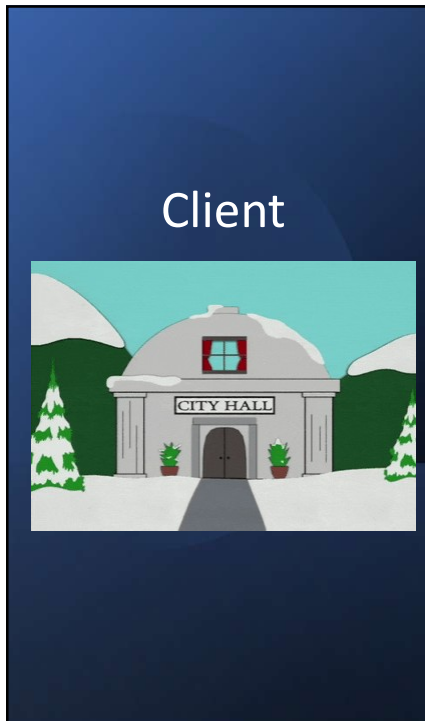
- **Client**
 - Rule 1.13
- **Communication**
 - Rule 4.02
- **Confidentiality**
 - Rule 1.05
- **Conflicts of Interest**
 - Rule 1.06
- **Competency**
 - Rule 1.13 (old Rule 1.12)



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Rule 1.13 Organization as Client

- (a) The City is the client.
- (b) “reasonable remedial actions”
- (c) Handle internally, unless...
- (d) Resignation or termination per Rule 1.16. See [Opinion 601](#).

Comment 4 – If a constituent becomes adverse to organization, advise constituent to get independent representation

Comment 9 – Considerations for government lawyers

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Month Day, Year

Via Email:

Name
Address 1
Address 2
City, State Zip Code

RE: Anticipated litigation against the City of [____], Texas

Dear Commissioner/Council Member [____]:

I am writing to formally bring to your attention a matter of concern involving a potential conflict of interest that has come to light. As the attorney for the City of [____], Texas (the "City"), it is my professional responsibility to ensure compliance with applicable legal and ethical standards, including those outlined in the Texas Disciplinary Rules of Professional Conduct.


Under Rules 1.06 and 1.13 of the Texas Disciplinary Rules of Professional Conduct, an attorney is prohibited from representing a person if the representation involves a substantially related matter where the person's interests are materially and directly adverse to another client of the lawyer or the lawyer's firm, if the representation reasonably appears to be adversely limited by the lawyer's responsibilities to another client or a third person, or if the lawyer's responsibilities to an organization, as the client, has a constituent of the organization who appears to have interests that are materially and directly adverse to the organization. Furthermore, if a conflict arises that makes continued representation improper, the attorney must withdraw from representation and advise such person that they may wish to obtain independent representation.

In light of the above, and because you have legal representation, I must inform you that your recent actions or positions, as they relate to a [____], which is the basis of certain legal claims against the City your attorney has brought to my attention in a letter of representation dated [____], are adverse to the City and as such the Office of the City Attorney (the "OCA") cannot advise or communicate with you regarding this limited matter.

Furthermore, it is the City's policy for the City's elected officials, management, and employees to not discuss pending or anticipated litigation with opposing parties without the OCA present. As such, we respectfully request that you cease and desist from communicating with these individuals as may relate to the limited subject matter of the anticipated litigation. Our office will continue to support and advise you, as a member of the City Council/Commission, on all other City matters unrelated to the subject matter of the anticipated litigation. You may also still communicate with City officials, management, and employees on all other matters unrelated to the subject matter of the anticipated litigation, keeping in mind that the City Charter, Article X, Section XX, has some limitations on that communication: "The city commission and its members shall deal with the


The Adverse Constituent

- Rule 1.13, cmt. 4
- Interest adverse to interest of the City
- Advise to obtain counsel
- CA can represent in other non-adversarial matters
- Privileged communications limited
- Fact specific inquiry



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Communication (non-clients)



Part IV Rules

- 4.01 - Truthfulness in Statements to Others**
 - "in the course of representing a client"
- 4.02 – One Represented by Counsel**
 - Dealing with opposing counsel
 - Opinions [474 \(1991\)](#), [492 \(1994\)](#)
- 4.03 – One Unrepresented by Counsel**
 - Pro se party
 - Members of the public
 - City Attorneys are **NOT** customer service reps!
- 4.04 – Rights of Third Persons**
 - (a) When representing the City vs. (b) never!

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Confidentiality



Rule 1.05 – Confidentiality of Information

- **1.05(a) The General Rule – DON'T REVEAL**
 - “Confidential” means privileged information and non-privileged client information.
 - “privileged Information” defined by rules of evidence (see Rule 5.03 of the TRE & TRCE and Rule 5.01 of the FRE)
 - “all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client”
- **Exceptions to Attorney-Client Confidentiality under 1.05(c-f)**
 - 1.05(c)(7-8): to prevent client fraud
 - 1.05(e): if client likely to commit crime or fraud resulting in SBI
 - 1.05(f): as required by 3.03(a)(2) (duties of candor to tribunal), 3.03(b)(correct false evidence, 4.01(b)(must disclose material fact to avoid assisting crime/fraud).

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Confidentiality



Rule 1.13, Cmt. 9

Government Agency

9. The duty defined in this Rule applies to governmental organizations. However, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful official act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulations. Therefore, defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context. Although in some circumstances the client may be a specific agency, it is generally the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the government as a whole may be the client for purpose of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. This Rule does not limit that authority.

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Conflicts of Interest



Rules 1.06 – 1.09 Conflicts of Interest

- **Fact specific determination**
- 1.06 - The General Rule
 - (a) opposing parties to the same litigation
 - (b)(1) substantially related matter & directly adverse
 - (b)(2) representation “reasonably appears or becomes adversely limited” by CA’s own interests
 - [Opinion 567 \(2006\)](#) – A city attorney cannot represent city-created Ethics Board overseeing complaint against majority of city council members
 - **Rule 1.13 Comment 5.** CA may represent organization’s “directors, officers, employees, members, shareholder, or other constituents, subject to the provisions of Rule 1.06” if the organization consents through the appropriate official(s).
- 1.07 – Intermediary
- 1.08 – Prohibited Transactions
- 1.09 – Former Clients

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Competence

Rule 1.01(a)

Some cities have 100 attorneys, some have 5. Call outside counsel if you aren’t or can’t become competent enough to handle a specific legal issue.

Competence means “possession of the legal knowledge, skill, and training reasonably necessary for the representation.” See Cmt. 1.



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Artificial Intelligence & Generative AI

- [Texas Ethics Opinion 705 \(2025\)](#): Among many other issues, lawyers should **acquire basic technological competence** before using any generative AI tool, should always ensure that the tool **does not imperil confidential client information**, should **always verify the accuracy** of any responses received from a generative AI tool...
- **Competence**- need to acquire a general understanding of how technology works, learn about data security protections, train lawyers and staff on how to appropriately use generative AI while protecting confidentiality.
- **Confidentiality**- depends on how a given program works and how the lawyer uses it. Can use generative AI programs for **general research purposes** without revealing client confidential information.



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Other Issues

- Judges
 - In court for City
 - Know about the [Texas Code of Judicial Conduct](#)
- Political candidates
 - Can support on own time
 - No use of city funds or other resources
 - What if candidate is current entity constituent?
- Other government entities employees
 - What information can/must you share?

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Can I ask my colleagues or the Helpline without breaching attorney-client confidentiality?

- Asking advice from other City Attorneys/the Ethics Helpline
 - See [Texas Ethics Opinion 673](#). CA can consult for benefit of client if keep it abstract or general and don't breach duty of confidentiality under TDRPC 1.05(c)(9) (see also comment 23 - permitted disclosure when lawyer seeks legal advice)
 - **This applies to using a CA LISTSERV**

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Be Proactive About Ethical Dilemmas

Ethics Helpline is open 8am-5pm Monday – Friday
1-800-352-3947

How does the Helpline work?

Attorneys leave a message with a brief synopsis of ethics issue and your Bar Number.

An Ethics Attorney will return their call and advise on which Ethics Opinion or Texas Disciplinary Rule of Professional Conduct applies and/or any relevant caselaw and/or statute applicable to facts presented.



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Caveats/Warnings

We do not have an attorney-client relationship; opinions are **advisory**.

Calls are returned in order received, response time depends on volume.

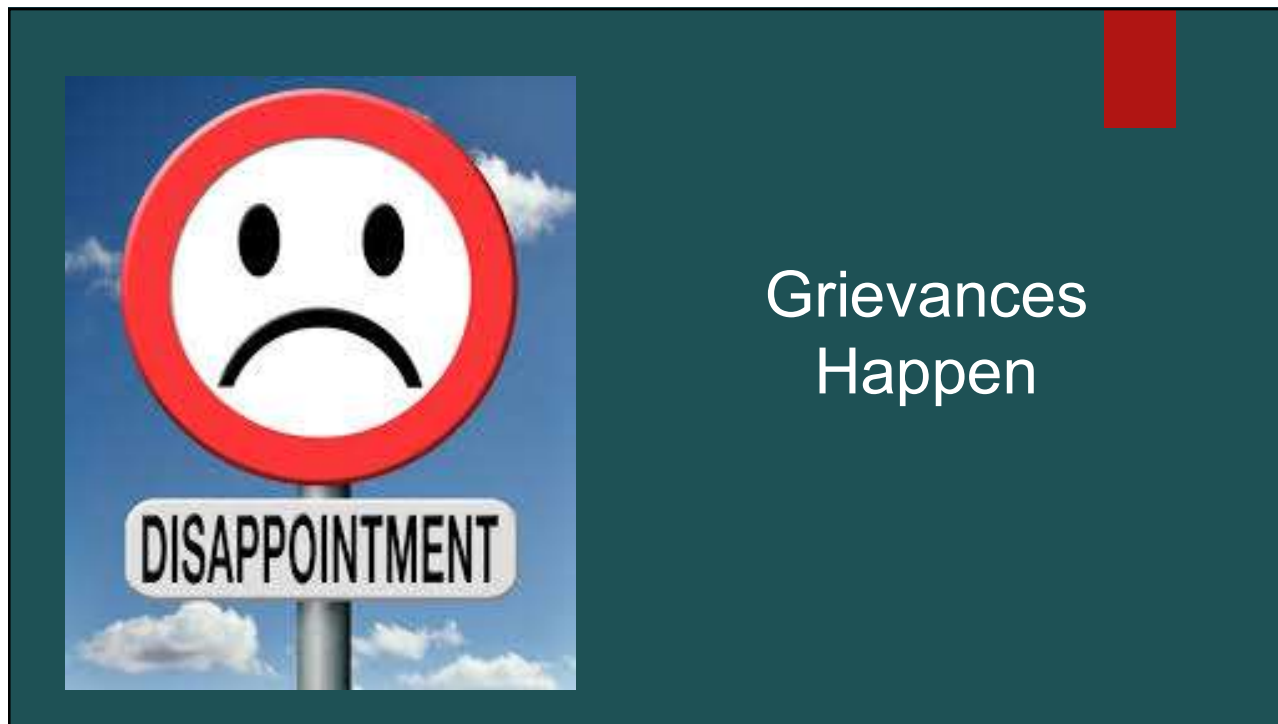
Our opinions are not binding on disciplinary committees; our role is to point you to the appropriate resource so you can make an informed decision about your case.

Outside sources: Texas Criminal Defense Lawyers Association, local bar associations for Fee Dispute Mediation.

We do not take complaints against other attorneys (1-800-932-1900) or advise on current grievances (1-877-953-5535).

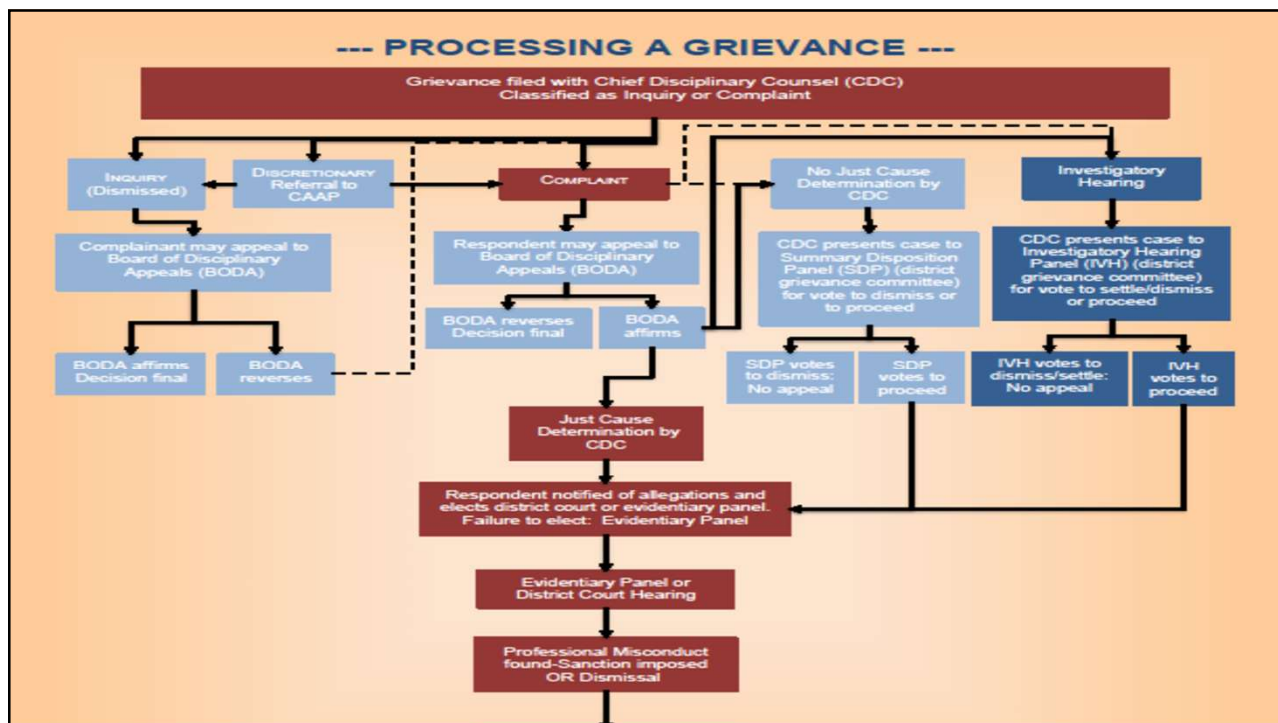


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Grievances Happen

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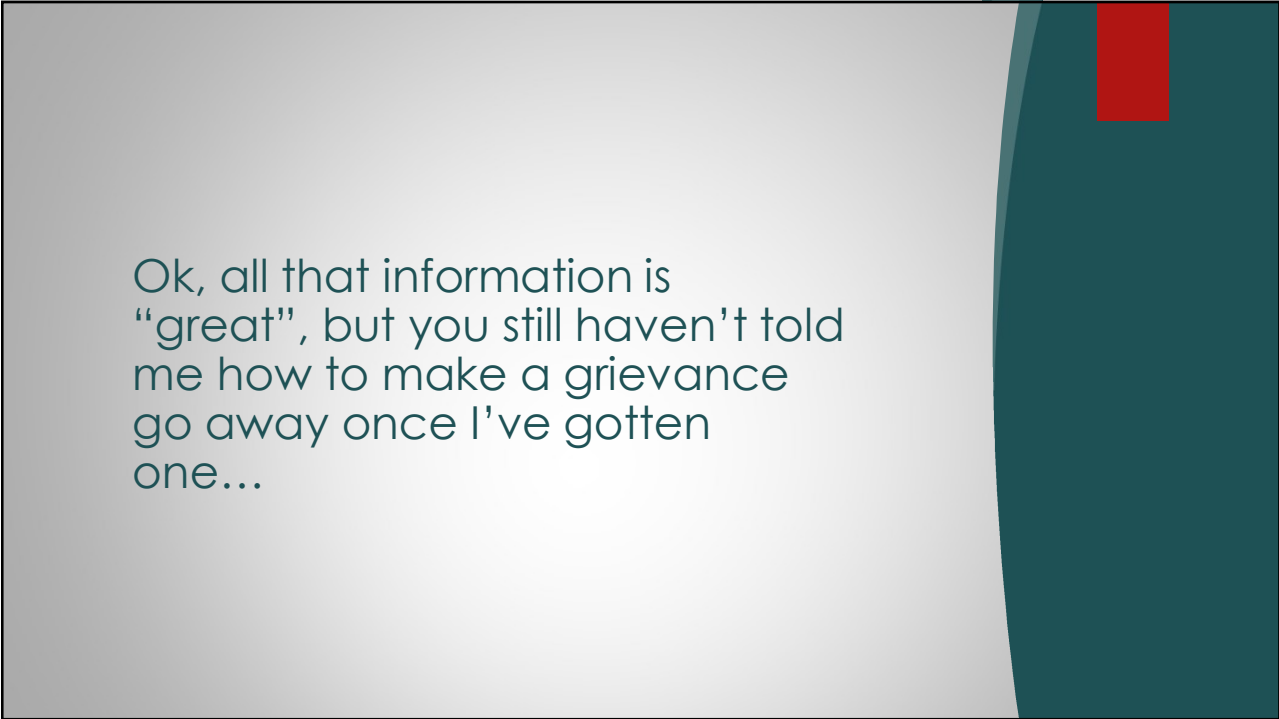
2020-2025
State Bar of Texas Attorney Grievance System

	24-25	23-24	22-23	21-22	20-21
Active Attorneys	116,127	113,771	111,412	108,816	106,591
Grievances Filed	7,964	7,985	8472	7,175	7,007
Classified as complaints	3,100	2,659	2520	1,928	1,946
Dismissed as inquiries	4,221	5,326	5562	4,997	4,870
Average Days to Classify	20	28	24	19	16
Areas of Law	24-25	23-24	22-23	21-22	20-21
Criminal	2329	2832	3165	2711	2347
Family	999	1674	1688	1631	1281
Civil	1171	1664	1738	1440	1434
Personal Injury	463	608	598	428	440
Immigration	252	280	214	175	226
Probate/Wills	292	440	418	336	280
Other	211	246	296	252	555
Bankruptcy	35	58	37	38	63

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Rule Violations Alleged	24-25	23-24	22-23	21-22	20-21
Communication	1536	2616	1943	1097	1067
Neglect	903	1604	1646	795	885
Declining or terminating representation	561	934	743	509	578
Integrity	457	675	588	525	547
Safeguard Property	471	728	474	414	463
Tribunals	204	409	247	213	207
Conflicts	197	180	215	148	189
Non-clients	99	142	103	70	97
Fees	88	384	72	60	119
Confidentiality	24	75	50	34	45
Law firms	17	86	43	25	10
Advertising & Solicitation	2	1	0	4	6

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Ok, all that information is
“great”, but you still haven’t told
me how to make a grievance
go away once I’ve gotten
one...

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**RESPOND TO
THE
GRIEVANCE!**

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Help us to help
YOU:
Give ALL the
information you
have about the
grievance to the
CDC up front!

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You are allowed to speak to
the Complainant after a
grievance is files.

Don't Forget: unless you've
been terminated, you still
owe a duty to the client.

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Other Resources



If your question is not within our purview, we may be able to point you to the resource on point.

Judicial Complaints	Unauthorized Practice of Law	Texas Criminal Defense Lawyers Association	Advertising Review- State Bar of Texas	Law Practice Management-State Bar of Texas	TLAP
<p>www.scjc.Texas.gov</p> <p>Venue for complaints about judges; confidential; see www.tx.courts.gov for Texas Code of Judicial Conduct</p>	<p>www.txuplc.org</p> <p>Has FAQs about what constitutes UPL in Texas; see also TDRPC 5.05 and Tex. Govt Code 81.101, defines practice of law</p>	<p>512.646.2734; ethics@tcdla.com</p> <p>Seasoned criminal defense attorneys advise members on ethics issues related to practice of criminal law.</p>	<p>adreview@texasbar.com</p> <p>Analyzes ads and law firm names for compliance with TDRPC 7.01-7.06.</p>	<p>lpm@texasbar.com; www.texasbarpractice.com</p> <p>Advises on issues related to business practices. Can assist with successor attorneys and custodianships.</p>	<p>24 Hours a Day 800.343.8527 www.tlaphelps.com</p> <p>Confidential resource for Bar members with mental health and/or chemical dependency issues. 24/7</p>

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