

**SUBJECT:** State Bar disciplinary proceedings revisions

**COMMITTEE:** Civil Practices — committee substitute recommended

**VOTE:** 8 ayes — Bosse, Janek, Clark, Hope, Martinez Fischer, Nixon, Smithee, Zbranek

0 nays

1 absent — Dutton

**WITNESSES:** For — Ruth A. Kollman

Against — None

On — Robert H. Frost, State Bar of Texas

**BACKGROUND:** Under Government Code, chapter 81, subchapter E, the Texas Supreme Court has authority over attorney disciplinary proceedings. Sec. 81.072 establishes guidelines for disciplinary proceedings and gives the court rulemaking authority. Under this section, the court has promulgated the Texas Rules for Disciplinary Procedure (TRDP) and has delegated administration of disciplinary matters to the State Bar of Texas. The bar handles these matters through its Commission for Lawyer Discipline.

**DIGEST:** CSHB 792 would prohibit the State Bar or a court from requiring an attorney to disclose attorney-client privilege information in a disciplinary proceeding unless the client initiated the complaint.

A panel of a State Bar district grievance committee would have to have a public member to be considered a quorum, and the size of the panel could not be changed to obtain a quorum without the agreement of all parties to the grievance.

A person could be appointed to a district grievance committee panel only if the person was a member of the district grievance committee from which the panel was assigned and was appointed in accordance with the TRDP. A

panel member could not be substituted for another grievance committee member on the day of the hearing.

Only the votes of panel members present at the hearing where the vote was taken would be counted. The district grievance committee panel would have to disclose to the parties to the proceedings the number of panel votes for, against, and abstaining from voting on a grievance complaint.

Not later than September 1, 2002, the State Bar would have to study its rules governing attorney discipline to determine whether they conformed to state law and would have to submit a report to the lieutenant governor and House speaker with recommendations on how to revise the State Bar rules and the TRDP to eliminate any conflicts with state law.

This bill would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

CSHB 792 would force grievance committees that hear attorney disciplinary matters to follow the rules set for them. District grievance committees often do not follow the TRDP in disciplinary proceedings, changing the members or the size of a panel at the last minute to gain a quorum. The bill would make clear that these liberties with the rules are impermissible.

The bill also would end practices that, although not against the letter of the rules, contradict their spirit. For instance, the TRDP require that one-third of the members of a district grievance committee and one-third of the members appointed to a given panel be public members. However, this permits a quorum of a six-person panel to have no public members. If public members are not hearing attorney grievances, the purpose of the rule is thwarted. The bill's redefinition of a quorum would ensure that the rules in practice conformed to their spirit and purpose.

Similarly, the votes of panel members who are not present for a vote often are counted if they were present to hear the evidence, as required by the TRDP. CSHB 792 would clarify that attendance at the vote also is required. The point of having a panel decide a case is to encourage members to deliberate. If members are not present at the vote, they likely have not been able to discuss and debate the matter with their colleagues, and the purposes served by deliberation suffer.

It should be no excuse that a grievance committee cannot get its members to attend the meetings of the panels on which they are to serve. Serving on these committees is and should be considered an honor. In fact, many people serve on them year after year. If attendance truly presents a problem, the committee needs new members.

OPPONENTS  
SAY:

CSHB 792 is unnecessary. Concerns have been raised about situations allowed by the rules that may be possible in theory, but rarely, if ever, occur in practice. A grievance committee does not substitute members of a panel or change the number of members on a panel over a party's objection.

The bill would impose on the State Bar and its grievance committees overly burdensome rules for reaching a quorum. These rules would hinder the grievance committee's ability to hear and dispose of client grievances. The members of these grievance committees are all volunteers with busy schedules. It is already difficult to convene a quorum of a panel and would become even more so under CSHB 792. The resulting delays in resolving disputes would harm both attorneys and clients.

NOTES:

The only provision of the original bill retained by the committee substitute is the prohibition against requiring disclosure of privileged information.