

SUBJECT: Statutory standards for recusals from attorney grievance committees

COMMITTEE: Licensing and Administrative Procedures — committee substitute recommended

VOTE: 8 ayes — Flores, Geren, Goolsby, Hamilton, Jones, Miles, Quintanilla, Thompson
0 nays
1 absent — Isett

WITNESSES: For — None
Against — None
On — John Neal, State Bar of Texas, Chief Disciplinary Counsel

BACKGROUND: Lawyers are held accountable under the Texas Disciplinary Rules of Professional Conduct. The Texas Rules of Disciplinary Procedure detail how a case is handled when a lawyer is accused of violating the disciplinary rules. If a complaint against an attorney involves an alleged violation of the rules of professional conduct, the attorney can choose to have the complaint heard in a district court or by an evidentiary panel of a grievance committee established under the disciplinary procedures.

Rules 2.01 and 2.02 of the disciplinary procedures detail how grievance committees are formed, specifying that each must have at least nine members, of which two-thirds must be attorneys and one-third public members. Rule 2.06 says that a member of an evidentiary panel is disqualified or is subject to recusal if a district judge would, under similar circumstances, be disqualified or recused.

Rule 18b of the Texas Rules of Civil Procedure outlines when judges are required to disqualify themselves or are subject to recusal in a proceeding. The rule lists three reasons for disqualification and seven circumstances under which judges shall recuse themselves.

Government Code, sec. 81.072 establishes numerous procedures to be followed when considering disciplinary and disability proceedings for attorneys and requires the Texas Supreme Court to establish procedures in addition to those in the statutes.

DIGEST:

CSHB 762 would amend Government Code, sec. 81.072 to establish a statutory standard for when members of attorney disciplinary grievance committee panels would have to recuse themselves.

The bill would require grievance committee panel members to recuse themselves from participating in a matter if they had a direct interest in the conduct at issue or if they had interactions with either party that would lead a reasonable person to believe the member had a conflict of interest. Panel members would have to recuse themselves from participating in hearings, including closed hearings, on complaints that had been placed on a dismissal docket and from voting on the matter. Recused panel members could be replaced with another member of the district grievance committee.

The bill would take effect September 1, 2007, and would apply only to grievances on which hearings were conducted after that date.

**SUPPORTERS
SAY:**

CSHB 762 is necessary to ensure that the reasons for recusal from attorney grievance committee panels are well known, clear, and easy to find. Currently, to discover the standards for recusal, someone must piece together information from the statutes, the Texas Rules of Disciplinary Procedure, and the Texas Rules of Civil Procedure, just to get started. The many reasons listed in the Rules of Civil Procedure must then be interpreted. This is confusing and results in people being unable to find or understand the standards.

CSHB 762 would address this problem by placing the standards for recusal in the Government Code along with other laws dealing with disciplinary and disability proceedings. This would ensure that those serving on grievance panels, the public, and attorneys going before the panels would know the standards to which panel members would be held. The standards used in CSHB 762 would be appropriate and easily understood by everyone involved.

Concerns that CSHB 762 would cause confusion because it would conflict with current practice are unfounded because the clear standard established

by the bill simply would replace the current standard. The new standard could be found easily in the statutes and communicated easily to attorneys, panel members, and the public. It is not uncommon for the Legislature to place in statute provisions found in agency or administrative rules.

The fact that more challenges to panel members recusing themselves have not been raised would illustrate that the standards themselves are elusive and confusing, not that they work well.

OPPONENTS
SAY:

CASHB 762 is unnecessary because established and well-known standards for recusals already are in place. Establishing a new statutory standard that would conflict with current standards could create confusion among panel members, attorneys, and the public. It would be better to provide consistency by allowing current standards to continue. It also is important to maintain the flexibility provided by allowing the Rules of Civil Procedure, rather than state law, to establish the details of recusals from grievance committee panels.

Replacing current standards, which are specific about recusals, with the vague language in the bill, which would be open to many interpretations, also would create confusion. CASHB 762 would result in two standards – where today there is one – for those reviewing complaints. Complaints now can be heard by either a district court or by an evidentiary panel of a grievance committee, so it would be best to continue having the standards that are applied to judges in the Rules of Civil Procedure also apply to panel members so that everyone hearing the complaints would operate under the same rules.

The current system works well and has resulted in panel members recusing themselves when an issue is raised. If members do not recuse themselves after an issue is raised, a procedure is available to contest a recusal.

NOTES:

The committee substitute removed a requirement that interaction between a panel member and a party would have to be significant and added a provision requiring that the interactions would have to lead a reasonable person to believe that a member had a conflict of interest.