

By: Whitmire

S.B. No. 825

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to disciplinary standards and procedures applicable to  
3 grievances alleging certain prosecutorial misconduct.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 81.072, Government Code, is amended by  
6 amending Subsection (b) and adding Subsections (b-1) and (b-2) to  
7 read as follows:

8 (b) The supreme court shall establish minimum standards and  
9 procedures for the attorney disciplinary and disability system.  
10 The standards and procedures for processing grievances against  
11 attorneys must provide for:

12 (1) classification of all grievances and  
13 investigation of all complaints;

14 (2) a full explanation to each complainant on  
15 dismissal of an inquiry or a complaint;

16 (3) periodic preparation of abstracts of inquiries and  
17 complaints filed that, even if true, do or do not constitute  
18 misconduct;

19 (4) an information file for each grievance filed;

20 (5) a grievance tracking system to monitor processing  
21 of grievances by category, method of resolution, and length of time  
22 required for resolution;

23 (6) notice by the state bar to the parties of a written  
24 grievance filed with the state bar that the state bar has the

1 authority to resolve of the status of the grievance, at least  
2 quarterly and until final disposition, unless the notice would  
3 jeopardize an undercover investigation;

4 (7) an option for a trial in a district court on a  
5 complaint and an administrative system for attorney disciplinary  
6 and disability findings in lieu of trials in district court,  
7 including an appeal procedure to the Board of Disciplinary Appeals  
8 and the supreme court under the substantial evidence rule;

9 (8) an administrative system for reciprocal and  
10 compulsory discipline;

11 (9) interim suspension of an attorney posing a threat  
12 of immediate irreparable harm to a client;

13 (10) authorizing all parties to an attorney  
14 disciplinary hearing, including the complainant, to be present at  
15 all hearings at which testimony is taken and requiring notice of  
16 those hearings to be given to the complainant not later than the  
17 seventh day before the date of the hearing;

18 (11) the commission adopting rules that govern the use  
19 of private reprimands by grievance committees and that prohibit a  
20 committee:

21 (A) giving an attorney more than one private  
22 reprimand within a five-year period for a violation of the same  
23 disciplinary rule; or

24 (B) giving a private reprimand for a violation:

25 (i) that involves a failure to return an  
26 unearned fee, a theft, or a misapplication of fiduciary property;

27 or

1                   (ii) of a disciplinary rule that requires a  
2 prosecutor to disclose to the defense all evidence or information  
3 known to the prosecutor that tends to negate the guilt of the  
4 accused or mitigates the offense, including Rule 3.09(d), Texas  
5 Disciplinary Rules of Professional Conduct; and

6                   (12) distribution of a voluntary survey to all  
7 complainants urging views on grievance system experiences.

8                   (b-1) In establishing minimum standards and procedures for  
9 the attorney disciplinary and disability system under Subsection  
10 (b), the supreme court must ensure that the statute of limitations  
11 applicable to a grievance filed against a prosecutor that alleges a  
12 violation of the disclosure rule does not begin to run until the  
13 date on which a wrongfully imprisoned person is released from a  
14 penal institution.

15                   (b-2) For purposes of Subsection (b-1):

16                   (1) "Disclosure rule" means the disciplinary rule that  
17 requires a prosecutor to disclose to the defense all evidence or  
18 information known to the prosecutor that tends to negate the guilt  
19 of the accused or mitigates the offense, including Rule 3.09(d),  
20 Texas Disciplinary Rules of Professional Conduct.

21                   (2) "Penal institution" has the meaning assigned by  
22 Article 62.001, Code of Criminal Procedure.

23                   (3) "Wrongfully imprisoned person" has the meaning  
24 assigned by Section 501.101.

25                   SECTION 2. As soon as practicable after the effective date  
26 of this Act but not later than December 1, 2013, the Texas Supreme  
27 Court shall amend the Texas Rules of Disciplinary Procedure to

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1 conform with Section 81.072, Government Code, as amended by this  
2 Act.

3 SECTION 3. This Act takes effect September 1, 2013.