

COMMITTEE ON DISCIPLINARY RULES AND REFERENDA PROPOSED RULE CHANGES

2.12. Investigation and Determination of Just Cause

The Committee on Disciplinary Rules and Referenda, or CDRR, was created by Government Code section 81.0872 and is responsible for overseeing the initial process for proposing a disciplinary rule. Pursuant to Government Code section 81.0876, the committee publishes the following proposed rules. The committee will accept comments concerning the proposed rules through March 31, 2026. Comments can be submitted at texasbar.com/CDRR or by email to cdrr@texasbar.com. The committee will hold a public hearing on the proposed rules by teleconference on April 1, 2026, at 10 a.m. CST. For teleconference participation information, please go to texasbar.com/cdrr/participate.

Proposed Rule (Redline Version)

2.12. Investigation and Determination of Just Cause:

A. Chief Disciplinary Counsel Determination of Just Cause: The Chief Disciplinary Counsel will investigate a Complaint to determine whether Just Cause exists.

1. General Rule: The Chief Disciplinary Counsel shall, within 60 days of the date that the Respondent's response to the Complaint is due, determine that Just Cause does or does not exist, or that the case will be set for an investigatory hearing. The Chief Disciplinary Counsel must make a Just Cause determination within 60 days of the date that the Respondent's response to the Complaint is due.

2. Exceptions: The Just Cause determination date is extended to 60 days after the latest of:

- a. the date of compliance specified in any investigatory subpoena issued by the Chief Disciplinary Counsel under (B) unless extended by objections under (D) or by agreement;
- b. the date of any enforcement order issued by a district court under (E); or
- c. the date that an investigatory hearing is completed.

B. Issuance of Subpoenas: During the investigation, the Chief Disciplinary Counsel, with the Committee chair's approval, may issue a subpoena that relates directly to a specific allegation of attorney misconduct for the production of documents, electronically stored information, or tangible things or to compel the attendance of a witness, including the Respondent, at an investigatory hearing.

C. Requirements of Subpoenas: A subpoena must notify the witness of the time, date, and place of appearance or production and must contain a description of materials to be produced. A subpoena must be served on a witness personally or in accordance with Rule 21a, Texas Rules of Civil Procedure. Proof of service may be by certification of the server or by return receipt. A witness, other than the Respondent, who is commanded to appear at an investigatory hearing is entitled to the same fee and expense reimbursement as a witness commanded to appear in district court.

D. Objections to Subpoenas: Before the time specified for compliance, the Respondent or witness must present any objection to the chair of the Investigatory Panel, if an investigatory hearing has been set, or to the Committee chair, if an investigatory hearing has not been set. Objections must be made in good faith. If the chair overrules an objection in whole or in part, and the Respondent or witness fails to comply with the chair's ruling, the Chief Disciplinary Counsel may seek to enforce the subpoena in district court under (E).

E. Enforcement of Subpoenas: The Chief Disciplinary Counsel may seek enforcement of a subpoena in the district court of the county in which appearance or production is required. The Respondent or witness may raise any good faith objection to the subpoena. If after notice and a hearing the district court finds that a person's noncompliance with or objection to a subpoena is in bad faith, then after notice and a hearing, the court may order

the person to pay the Chief Disciplinary Counsel's reasonable and necessary costs and attorney fees. The district court's order is not appealable. The Chief Disciplinary Counsel must not consider a Respondent's good faith objection to an investigatory subpoena as grounds for Just Cause.

F. Setting and Conducting Investigatory Hearing: The Chief Disciplinary Counsel may set a Complaint for an investigatory hearing. The hearing will be set before an Investigatory Panel and is a nonadversarial proceeding that may be conducted by teleconference. The chair of the Investigatory Panel may administer oaths and may set forth procedures for eliciting evidence, including witness testimony. Witness examination may be conducted by the Chief Disciplinary Counsel, the Respondent, or the Investigatory Panel. An investigatory hearing is strictly confidential and any record may be released only for use in a disciplinary matter.

G. Results of Investigatory Hearing: An investigatory hearing may result in a Sanction negotiated with the Respondent or in the Chief Disciplinary Counsel's dismissing the Complaint or finding Just Cause. The terms of a negotiated Sanction must be in a written judgment with findings of fact and conclusions of law. The judgment must be entered into the record by the chair of the Investigatory Panel and signed by the Chief Disciplinary Counsel and the Respondent.

H. Dismissal Before Investigatory Hearing: If at any time prior to a scheduled investigatory hearing on a Complaint the Chief Disciplinary Counsel determines that Just Cause does not exist, the Chief Disciplinary Counsel shall cancel the investigatory hearing and place the case on a Summary Disposition docket.

Proposed Rule (Clean Version)

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2. *Exceptions:* The Just Cause determination date is extended to 60 days after the latest of:

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