
State Bar of Texas

Agency at a Glance

Dating back to 1882, the State Bar has evolved from a voluntary association of lawyers to a quasi-governmental, administrative agency of the judicial branch. Operating as both a regulatory agency and a professional association, the State Bar currently exercises jurisdiction over more than 70,000 Texas attorneys who are required to be members of the Bar.

Focusing its efforts on enhancing member professionalism, public protection and service, the State Bar's major functions include:

- assisting the courts in improving the administration of justice;
- advancing the quality of legal services to the public through various professional development programs including continuing legal education programs;
- protecting the public by maintaining professional rules of conduct and administering the Bar's attorney disciplinary and disability system;
- serving the public by providing law-related educational programs and lawyer referral services and promoting equal access to justice for all citizens; and
- assisting local bar associations.

Key Facts

- **Funding.** The State Bar operates with an annual budget of about \$27 million. The State Bar receives no state appropriations, but is a public corporation funded primarily by membership dues and professional development program fees. The State Bar's budget is subject to the approval of the State Bar's Board of Directors and the Supreme Court.
- **Staffing.** The State Bar employs a staff of almost 300, two-thirds of which work in Austin and the rest in regional and field offices located throughout the state. State Bar employees are not employees of the State of Texas.
- **Complaints.** In the 2001-2002 fiscal year, the agency received 9,027 grievances. Sixty-two percent were dismissed, while 35 percent were pursued as complaints. Investigation of these complaints led to 482 sanctions against attorneys; 29 percent of which were private reprimands, and 33 percent of which were suspensions.

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Antonio Alvarado, Executive Director
 (512) 463-1463

Recommendations

1. Continue the State Bar, but Require Increased Accountability Through Strategic Planning and Performance-Based Budgeting.
2. Streamline the State Bar's Unnecessarily Complex Committee Structure to Make it More Responsive to the Bar's Needs.
3. Establish a Framework for the State Bar's Grievance System in Statute and Simplify the Process to Promote Consistency and Reduce Resolution Time.
4. Require the State Bar to Maximize Services Offered Through its Client-Attorney Assistance Program Through Increased Coordination with the Grievance System and Other Bar Programs.
5. Provide for More Efficient Rulemaking by Repealing the 51 Percent Participation Requirement in Rulemaking and Dues Referenda.
6. The State Bar Should More Rigorously Pursue Disciplinary Action Against Lawyers Engaging in Frivolous Lawsuits.

Issue 1 | **While the State Bar Should Be Continued, Its Uniqueness Makes It Susceptible to Problems With Oversight and Accountability.**

Key Findings

- The State Bar is a quasi-governmental agency subject to dual oversight by the Supreme Court and the Legislature.
- Texas has a continuing need to maintain the State Bar.
- Despite dual oversight by the Supreme Court and the Legislature, the State Bar lacks sufficient accountability to the public.
- The State Bar has difficulty focusing on core functions.

The State Bar functions as both a professional association and a regulatory agency, with required membership of all lawyers in Texas. As with many other unified bars, the Supreme Court and the Legislature share oversight. This unique arrangement has allowed the Bar to operate without many of the standard government accountability mechanisms that are required of other state agencies. These mechanisms contribute to the Bar's inability to focus on core functions and resolve internal inefficiencies.

Standard state agency oversight controls, such as strategic planning and performance budgeting, serve as tools to increase program effectiveness and ensure public accountability. These recommendations seek to provide the Bar and Supreme Court with these tools to improve oversight and management. Specifically, strategic planning would enable the Bar to concentrate on its core functions and maximize its resources. Rather than administering various isolated programs and functions, the Bar would be able to coordinate programs to achieve broader goals. Additionally, a long range planning instrument would help achieve some continuity within the Bar's inordinately large, and changing leadership structure. Performance reporting and implementing a performance-based budgeting process would further assist the Bar in being responsive to its members and the public.

Recommendations**Change in Statute****1.1 Continue the State Bar for 12 years.**

This recommendation continues the State Bar for the standard 12-year period until 2015.

1.2 Require the State Bar to develop a strategic plan that includes goals and a performance measurement system.

Similar to executive branch state agencies, the State Bar would develop a formal strategic plan each even-numbered year covering a period of five years, beginning with the next odd-numbered year.

The plan should include goals and a system for measuring performance, concentrating on results and outcomes of Bar operations and services. By developing a strategic plan with goals, the Bar would be more focused on its core mission, and better able to maximize its resources and the effectiveness of its programs. For increased accountability, the Bar should annually report its performance measures to the Supreme Court and in the *Texas Bar Journal*.

1.3 Require the State Bar to adopt a performance-based form of budgeting, subject to Supreme Court approval.

This recommendation would require the State Bar to do more comprehensive, long-range planning in conjunction with its budgeting effort. The Bar and the Supreme Court should develop measurable goals and consider performance in the development and approval of the Bar's annual budget. After implementation of the budget, the Bar should report on its performance to facilitate the revision of performance projections when needed, and inform the Supreme Court.

Issue 2 | The State Bar's Committee Structure is Unnecessarily Complicated to Serve the Bar's Needs.

Key Findings

- The State Bar's committee structure is cumbersome and may impair the Bar's ability to get things done.
- Recent actions by the State Bar demonstrate its understanding of the need to streamline its oversight structure.

The State Bar of Texas is unique in its reliance on a multiplicity of committees, comprised of members of the Board of Directors and volunteer attorneys, to help carry out Bar functions. In all, the State Bar has 59 committees that develop and implement Bar policies. One of these, the Executive Committee, assists the Board in carrying out its responsibilities.

The State Bar's committee structure is unwieldy, plagued by overlapping responsibilities and rising costs. The Bar would benefit from clarifying the responsibilities of the Executive Committee to assess the need for Bar committees, directing a comprehensive review of standing and special committees on a more frequent basis, developing more meaningful reporting requirements to assess the accomplishments of standing and special committees, and structuring the Board committees around its core functions.

Recommendations

Change in Statute

2.1 Place the Executive Committee in statute and clarify its authority regarding the State Bar's committee structure.

The Executive Committee would approve the creation of any new standing and special committees, upon recommendations by the President-Elect. Before approval, the Executive Committee would require a fiscal impact study, a poll of each chair of an existing committee, and a review to determine if the matter can be undertaken by an existing committee. The Executive Committee would also oversee or direct a comprehensive review of standing or special committees at least biennially to examine the continued necessity of each existing committee and determine any overlap of activities among the committees. The State Bar Board may assign other responsibilities to the Executive Committee, as it determines appropriate.

Management Action

2.2 The Bar should develop reporting requirements for its standing and special committees.

The Bar should develop reporting requirements for use by the standing and special committees to reflect the productivity of the committees. Committees would have to develop goals and objectives reflecting their responsibilities and outline activities to accomplish their objectives. At the end of the Bar's fiscal year, committees would use this information to assess how well they met their objectives and stayed within budget. The committees would submit their findings to the President, incoming President, and the Executive Director.

2.3 The State Bar's Board of Directors should decrease the number of Board committees.

The Board should decrease the number of Board committees to correspond with the functions, activities, and entities of the Bar. Decreasing the number of committees would help better focus the efforts of the Board of Directors in overseeing the activities of the State Bar.

Issue 3 | The Current Grievance System is Unnecessarily Complex, Lacks Consistency, and Lengthens Resolution Time.

Key Findings

- Complaint classification and lack of administrative dismissal power result in unnecessary hearings.
- The redundancy and complexity of the current system increase complaint resolution time.

- The application of attorney's fees is arbitrary and inconsistent.
- The State Bar cannot ensure consideration or implementation of needed changes to the grievance system.

Texas attorneys must adhere to the Texas Disciplinary Rules of Professional Conduct. Failure to comply with these rules may result in disciplinary action prescribed in the Texas Rules of Disciplinary Procedure. The grievance process begins when a written statement intending to allege professional misconduct is submitted to the Chief Disciplinary Counsel (CDC). If determined to allege misconduct, the matter may proceed through multiple stages of review. Ultimately, an attorney may face disciplinary sanctions that range from a private reprimand to disbarment. These sanctions often include attorney's fees, which serve to recover CDC costs incurred in disciplinary proceedings.

The State Bar's grievance system is designed to protect the public from attorney misconduct, but the process may create unrealistic expectations on the part of complainants just as it significantly increases time to resolve complaints. Improving the accountability of the system by providing a framework for the grievance system in statute would improve effectiveness in resolving grievance issues. Streamlining the grievance process would reduce redundancies that serve to delay the resolution of complaints, and providing a greater level of public assistance would help solve the problems that give rise to grievances.

Recommendations

Change in Statute

3.1 Establish a framework for the State Bar's grievance system in statute.

This recommendation would revise the State Bar's grievance system and establish the major elements of this system in statute. Specific implementation provisions, including time limits, for the grievance process would remain in rules, promulgated by the Supreme Court.

- **Provide a process for classifying grievances and referring dismissals for alternative resolution.**

At intake, an investigator of the CDC would classify the grievance as either a complaint or an inquiry. Client-filed grievances classified as an inquiry would be dismissed and referred to the Client-Attorney Assistance Program (CAAP) to attempt resolution, on a voluntary basis, outside the grievance system. The complainant would be able to appeal the classification of the grievance as an inquiry to the Board of Disciplinary Appeals, and may amend and resubmit the grievance to the CDC. The respondent would not be able to appeal classification decisions since, unlike the current process, more thorough investigation would occur before a hearing takes place.

- **Simplify the hearings process by reducing the number of hearings.**

Grievances classified as a complaint would be thoroughly investigated by the local CDC to determine if the complaint should be dismissed or if just cause exists to believe that misconduct occurred. CDC recommendations for dismissal and findings of just cause would go to a grievance committee panel in either a dismissal docket or a hearing docket. In the dismissal docket, the grievance committee panel would consider denying the dismissal and setting the case for a hearing, or approving the dismissal and possibly referring the matter to CAAP.

In the hearing docket, the panel would review cases found to have just cause to believe misconduct occurred. At this stage, the Commission for Lawyer Discipline would act on behalf of the complainant. The panel may dismiss the matter and refer it to CAAP, find a disability and refer it to a district disability committee, or issue sanctions. The panel hearing would be closed to the public to allow the grievance committee panel to address confidential matters and issue private reprimands. However, if any sanction other than a private reprimand is issued, all hearing documentation shall be made public upon request.

- **Streamline the hearings process by eliminating the option of district court.**

Appeals of panel decisions would only be made to the Board of Disciplinary Appeals (BODA), eliminating the option of district court. Both the respondent and the Commission for Lawyer Discipline, acting on behalf of the complainant, could appeal the case to BODA and then to the Supreme Court.

Management Action

3.2 The State Bar should devise specific guidelines for awarding attorney's fees.

The State Bar, with approval of the Supreme Court, should create and implement guidelines for awarding attorney's fees in grievance cases, addressing amount, applicability, validity and documentation. The State Bar should review these fees periodically to ensure adherence and consistency.

3.3 The State Bar should establish appointment qualifications for grievance committee members.

The State Bar should establish appointment qualifications for grievance committee members and provide a review process to ensure that qualifications are met. This review process should include a criminal background check.

Issue 4 | The State Bar Does Not Maximize Services Offered Through Its Client-Attorney Assistance Program.

Key Findings

- Poor coordination with State Bar programs limits CAAP's ability to address non-disciplinary issues.
- The State Bar does not adequately promote CAAP to attorneys and clients, and does not have a strategy to guide the program.

CAAP operates as a voluntary mediation and dispute resolution program for non-disciplinary offenses. With narrowly defined objectives and little coordination with other State Bar programs, CAAP has had limited success. For example, CAAP is poorly positioned to reduce the number of grievances that enter the disciplinary system and to help resolve problems that do not rise to the level of a

grievance. In addition, attorneys and clients are not aware of the remedies available through CAAP and other State Bar programs.

These recommendations would strengthen CAAP by establishing clear goals and enabling increased coordination between programs, reducing the number and enhancing the validity of filed grievances. In addition, linking the program to the disciplinary system would expand the role of CAAP and allow it to handle problems that cannot be addressed by the disciplinary system.

Recommendations

Change in Statute

4.1 Directly link CAAP with the disciplinary system and require coordination with other State Bar programs.

All dismissals of client-filed grievances would be referred to CAAP as a voluntary alternative for further resolution. Addressing non-disciplinary issues, CAAP would remain separate from the CDC, yet would maintain the confidentiality of the disciplinary system to allow full cooperation of the client and the attorney in resolving non-grievable issues. By referring all client-filed classification and case dismissals to CAAP, the grievance system can concentrate on actionable complaints and the others can be addressed by CAAP. Clients would benefit by receiving an immediate response, speedy resolution, and appropriate information and referrals. Attorneys would also benefit from services resulting in prevention of future grievances and improved client satisfaction and service.

Management Action

4.2 The State Bar should institute clearly defined goals and outcome measures for CAAP to track its performance and effect on the grievance system.

The State Bar should define clear goals and outcome measures for CAAP to ensure that the program's efforts are maximized through increased coordination with other Bar programs. CAAP's main objective should be to address the number of inactionable complaints. CAAP should attempt to facilitate the resolution of minor problems informally or direct the caller to the proper channels, including State Bar programs specifically designed to address these issues. If instituted properly, CAAP should have a significant effect on the grievance system.

4.3 The State Bar should increase attorney and public awareness of CAAP by expanding program outreach and accessibility.

This recommendation directs the State Bar to make use of various media, including the Internet, Bar publications, and telephone to promote awareness by members and the public of CAAP as an alternative to the grievance system.

Issue 5 | Requiring 51 Percent of State Bar Members to Vote in a Referendum Prevents Needed Changes to Rules and Ignores the Clear Majority in an Election.

Key Findings

- Requiring a majority of members to vote in State Bar referenda impedes the Supreme Court's ability to make needed changes in rules.
- Because the majority decision in a referendum is irrelevant without 51 percent participation, opponents may gain an unfair advantage by not voting, thwarting the will of a greater number of Bar members.
- Referenda require the expense of significant State Bar resources.

The Supreme Court and the State Bar Act require members of the Bar to vote on proposed changes to rules governing the operations of the State Bar, and the conduct and discipline of its members. However, this ability to self-regulate is hindered by a statutory provision that requires at least 51 percent of the Bar's registered members to vote in an election. The Bar has difficulty achieving this turnout and referenda sometimes fail – even when a clear majority of the votes support proposed changes. The 51 percent requirement allows opponents of proposed measures to defeat a referendum by encouraging a few lawyers not to vote rather than attempting to shift many lawyers' votes.

Because the 51 percent requirement affects the Bar's ability to implement needed changes, such as in its disciplinary rules and Bar operations, it directly affects lawyers and the public. Eliminating the 51 percent requirement and allowing a simple majority of those voting to determine the outcome of the election would allow the Supreme Court and the State Bar to more quickly implement needed changes in rules. Increased efficiencies may also be gained through additional recommendations that would authorize use of electronic balloting, and require the State Bar to track referendum expenses.

Recommendations

Change in Statute

5.1 Repeal the 51 percent participation requirement in rulemaking and dues referenda.

This recommendation would allow Bar members to continue voting in referenda concerning proposed rule changes and dues increases, but would eliminate the requirement for 51 percent of registered Bar members to vote, for a referendum to be considered valid. Instead, a simple majority would determine the outcome of a referendum. Under Supreme Court direction, the State Bar should continue to promote and track member participation in elections, and should report participation levels to the Supreme Court and in the *Texas Bar Journal*.

5.2 Authorize the State Bar to administer referenda electronically.

Advances in technology and use of the Internet provide increasing opportunities for the State Bar to conduct more efficient and cost effective referenda. This recommendation would authorize the State Bar, with Supreme Court approval, to distribute and receive referendum ballots and related materials electronically, if the Bar can provide assurance that members have secure access to information and voting.

Management Action

5.3 The State Bar should track all costs associated with administering referenda.

The State Bar should develop a standard approach, subject to Supreme Court approval, for determining actual costs, including staff time, travel, publications, mailing, and other related costs incurred in the administration of referenda. The State Bar should report these costs to the Supreme Court and in the *Texas Bar Journal*, to notify all members. With a standard approach for reflecting direct and indirect expenses, the State Bar would be able to more accurately budget for referenda and administer them more efficiently.

Issue 6 | Frivolous Lawsuits Require More of the State Bar's Attention.

Despite legislative tort reform in the early and mid-1990s, frivolous lawsuits continue to be a focus of controversy. For example, frivolous lawsuits are associated with rising employer health care costs and doctors' medical malpractice insurance rates, and ultimately limited public access to affordable health care.

The State Bar rules prohibit a lawyer from bringing or defending a proceeding that the lawyer believes is frivolous. The courts are required by statute to report attorneys engaged in frivolous lawsuits to an appropriate State Bar grievance committee. Despite these avenues for holding lawyers engaged in frivolous lawsuits accountable, the State Bar can more aggressively pursue disciplinary action to discourage frivolous lawsuits.

Recommendation

Management Action

6.1 The State Bar should more rigorously pursue disciplinary action against lawyers engaging in filing frivolous lawsuits.

Fiscal Implication Summary

Because the State Bar does not receive General Revenue appropriations, no recommendations would have a fiscal impact to the State. Some recommendations offered in Issues 1, 2, and 5 would result in savings to the State Bar, but these could not be estimated. Specific fiscal impact to the Bar in the remaining issues are summarized below.

- *Issue 3* – Recommendations would generate savings from the elimination of unnecessary disciplinary hearings totaling \$600,800 annually. Reduced revenue may result from the standardization of attorney’s fees, but this could not be estimated.
- *Issue 4* – The requirement for all client-driven complaints dismissed in the grievance system to be referred to the Client-Attorney Assistance program would result in an increase in program costs of \$365,650 annually.

