

STATE BAR OF TEXAS

Staff Report  
to the  
Sunset Advisory Commission  
July 28, 1978

Legislative Budget Board  
Program Evaluation  
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## INTRODUCTION

This report is submitted pursuant to Section 1.06, Subsection 3 of the Texas Sunset Act and contains a review of the operations of the State Bar of Texas. Termination of the State Bar of Texas has been scheduled for September 1, 1979 unless it is continued by law.

The material contained in the report is divided into three major sections: Background, Review of Operations and Conclusions. The Background section contains a brief history of legislative intent and a discussion of the original need for the State Bar of Texas. The Review of Operations section contains a review of the operation of the agency, and uses the self-evaluation report submitted by the agency as the basis of review unless noted. The information contained in the self-evaluation report was verified, and additional data were obtained through interviews and review of agency files and other data sources. The Conclusions section summarizes the import of material developed in the individual criteria from the standpoint of whether or not Sunset criteria are being met, and develops approaches relative to these findings.

This report is designed to provide an objective view of agency operations based on the evaluation techniques utilized to date. Together with pertinent information obtained from public hearings, a factual base for the final recommendations to the legislature will be provided.

BACKGROUND

## HISTORICAL DEVELOPMENT

The practice of law dates back, in western society, to well before classical Greek civilization. In the tribal society of classical Greece, a religious caste of men known as interpreters advised the people of the accepted way of dealing with transactions and decisions. These men performed many of the functions of modern lawyers. The concept of the legal practitioner as advocate was borrowed from the Greeks by the Romans, and by the 5th and 6th Centuries Roman advocates had attained leading positions in their society. Advocates studied at law schools in principal Roman cities and a specific number of advocates was fixed for each court. Roman law recognized fees, fixed a fee scale and provided for professional discipline. Therefore, many of the legal practices of today were first established through Roman law.

Following the fall of the Roman Empire in 476 A.D., Roman law in Western Europe declined until the study of law was revived in the Italian universities of the 12th Century. The period from 476 to the 12th Century was characterized by the development of law as administered by the Church. Each bishop had his court with the Pope being the supreme legislator and judge. However, by the 15th Century, the influence of the church on legal practice was essentially overcome by the establishment of common law courts. Lawyers of this period organized Inns of the Court which were professional guilds where lawyers were trained in common law.

In 17th Century England, the distinction between barristers, who were admitted to practice by the Inn of the Court in which they studied, and attorneys, who were admitted by the court, was sharply drawn. Barristers were regulated by the Inn of the Court while attorneys were under the control of Parliament and the judges. Attorneys of this period were required to use practical procedures and forms to obtain legal results while the barristers, who advised on the pleadings,

dealt mainly in theory. At this time, the exclusion of attorneys from Inns of the Court deprived them of a professional organization. In the 18th Century, a group of attorneys formed the "Society of Gentlemen Practitioners in the Courts of Law and Equity," a group similar to the modern voluntary bar. However, there was no really effective organization until the advent of the "Incorporated Law Society" in the 19th Century.

The period of American colonization was concurrent with the decline of the Inns of the Court into mere social institution rather than disseminators of professional education. Therefore, early legal institutions in the colonies were not well organized. Lawyers were considered from early colonial days as officers of the court and, therefore, public servants. Consequently, admission to practice in the colonies was regulated from the beginning either by the legislative body, governor or the courts. After the early colonial period, when governments legislated against the professional lawyer, systems of admission were generally decentralized. Ten of the states admitted to the Union before the close of the 18th Century permitted each court to examine individuals desiring to practice before its Bar. In New England, the county bars united in 1788 and standardized rules governing admission. By 1800, six states required examination prior to admission to legal practice.

#### Legal Practice in Texas

The Texas legislature, on May 12, 1846, provided for the licensing of attorneys by the District Courts and Supreme Court of the state. The act set the requirements for licensure and required an oral examination of the applicant to be conducted in open court. In 1903, provision was made by statute for the appointment of a Board of Legal Examiners by the Court of Civil appeals. The responsibilities for regulating admission to the Bar was first given to the Supreme

Court of Texas through legislation enacted in 1919. The Act of 1919 provided for a Board of Law Examiners to be appointed by the Supreme Court.

The beginning of the State Bar of Texas may be traced to the initial meeting of the Texas Bar Association on July 18, 1882. The 308 original members of the association adopted a constitution providing that any Texas attorney in good standing was eligible for admission. The objectives of the association were "to cultivate the science of jurisprudence, to promote reforms in the law, to facilitate the administration of justice and to elevate the standards of integrity, honor, and courtesy in the legal profession." The constitution of the association called for annual meetings and created seven committees including the Committee on Grievance and Discipline. Proceedings of the Texas Bar Association indicate that the association took an active role in recommending changes in the legal system as well as protecting the interests of its members. The association played an important part in the passage of the Act conferring upon the Supreme Court of Texas full rule-making power. In addition, the Association provided for the discipline of its members and fought the unauthorized practice of law which was common during the period. By 1926, the association had a membership of 1100. In 1931, the bylaws of the association were amended to provide for a full-time executive secretary and a central office. A full-time executive secretary was employed in 1938.

#### State Bar Act

The Texas Bar Association began the study of the concept of the integrated bar as early as 1923. By 1923, two states, North Dakota (1921) and Alabama (1923) had established integrated bars and New Mexico (1925) was soon to follow. In 1926, the executive committee of the Bar Association gave its formal support to the compulsory bar system. The purposes of the unified bars of the period were "to



make more effective the support of the ethical standards of the profession and to remove obstacles to the speedy vindication of individual and public rights." However, the self-interest of the Bar Association in the establishment of a unified bar is reflected in the statement of the chairman of the Association's Committee on the self-governing bar who said in 1928. "Why, for years we meet here annually and pass resolutions and appoint committees on judicial reform and remedial procedure. What does it amount to? Nothing! Out of the 6,000 lawyers in the state we represent 1,500 or 1,700 . . ."

The first bill seeking to unify the Bar as a self-governing corporation was presented to the legislature in 1929. The bill was introduced to the senate where it was strongly opposed as favoring the interests of lawyers, representing liability and insurance companies and because it did not provide for a trial by jury in disbarment proceedings. The bill, which had been modeled after the California bill, failed to pass. The same bill, with minor alterations, was presented to the Forty-second Legislature (1931) and Forty-third Legislature (1933) and failed to pass. In 1935, a revised bill conferring full authority to the Supreme Court to promulgate rules and regulations for the State Bar was presented. This bill failed to pass in the legislative sessions of 1935 and 1937.

The State Bar bill, with three amendments to its original two paragraphs, was passed by the legislature in 1939 and signed by Governor W. Lee O'Daniel on April 19. The bill provides that the Supreme Court of Texas shall adopt rules and regulations to govern the disciplining of lawyers and for the conduct of the State Bar. It further provides that all licensed attorneys are to be members of the State Bar and that the Supreme Court is prohibited from passing any rule abrogating the right of trial by jury in the home county of the defendant in disbarment cases. At the time of the bill's passage, 22 states had integrated bars and bar associations in

13 states were seeking integration. As in all but two states with integrated bars, the Texas Bar Association relinquished its role as the lawyers' representative to the new compulsory State Bar.

### State Bar Rules

The rules of conduct required by the State Bar Act were approved by the Supreme Court on February 22, 1940 and approved through referendum by the lawyers of Texas on April 8, 1940. The rules consisted of 13 articles which govern the operation of the Bar, provide a method of disciplining attorneys and regulating unauthorized practice, and establish canons of ethics for the guidance of lawyers.

In 1944, a new rule was adopted requiring that no member of the State Bar holding a state office for which remuneration is received, or a candidate for such office, shall be qualified to hold office in the State Bar. Amendments to the State Bar rules made in 1957 specify the duties of the General Counsel, how officers are to be elected and the duties of the board and executive director. In 1960, rules were adopted establishing the method of submitting resolutions, motions and other proposals at the Bar's annual meeting. Amendments made in 1965 further define the role of the executive director, established grievance district designations and altered the rules governing the appointment of grievance committee members. The Code of Professional Responsibility, a part of the State Bar Rules, was amended by the Supreme Court on December 20, 1971. Nine canons of ethics and the disciplinary rules there under were adopted to replace the original 43 canons.

### Activities and Accomplishments of the State Bar

From its earliest years, the State Bar of Texas has written and supported legislation related to the practice of law in Texas. The Bar was active in the establishment of new rules of civil procedure as early as 1940 and supported the

Securities Act, the Insurance Code, the Public Welfare Act and other significant legislation. In 1948, the Bar inaugurated a systematic program of continuing education for the lawyers of Texas. In the early 1950's, the State Bar encouraged the establishment of legal aid clinics and promoted lawyer referral services. As a result of its activities, the State Bar won the American Bar Association Award of merit as the most outstanding state bar organization for the year 1951.

Recent accomplishments of the State Bar include the establishment of a client security fund to ameliorate the losses suffered by clients through the dishonesty of their lawyer, the development of the Texas Legal Protection Plan for providing pre-paid legal services to the public and the construction of the Texas Law Center. In 1977, the State Bar of Texas was again chosen by the American Bar Association as the most outstanding state bar in the nation.

## COMPARATIVE ANALYSIS

In order to determine the pattern of regulation of the practice of law within the United States a survey of 50 states was conducted. Survey responses indicate that all 50 states regulate the practice of law. From the standpoint of organizational patterns, 30 states, including Texas, require the membership of practicing lawyers in the State Bar. In 11 of the 30 states which require bar membership, the Bar is responsible for both the admission of lawyers to the Bar and lawyer discipline. In 16 states, both admission and disciplinary functions are performed by officers or committees appointed by the Supreme Court.

Of those states which require that lawyers be Bar members, only one requires that Bar directors be appointed by the governor. All states but one require that Bar directors be members of the profession as does Texas. In two states lay members serve on the State Bar board of directors. Of the states which require Bar membership, 20 indicate that they are directly responsible to the Supreme Court of their state, however each of the Bars is itself a policy-making agency.

All of the states surveyed indicate that the revenue of the agency, regardless of its organizational form, is generated from fees collected. Other sources of revenue, with the exception of federal grants, were cited by four of the bars surveyed. The administrative operations, including data processing and personnel, of six state bars were found to be shared with other state agencies. The multi-state national examination is given by 34 of the states surveyed including Texas.

Regulation of the practice of law requires the performance of the basic functions of administration, testing, license issuance and enforcement. These basic functions, as performed by the State Bar of Texas, are examined in light of the criteria specified in the Texas Sunset Act in the material which follows.

## REVIEW OF OPERATIONS

## Criterion 1

The efficiency with which the agency or advisory committee operates.

The review under this criterion centered on financial data and other records of the agency. This information was analyzed to determine if funds available to the agency had been utilized in a reasonable manner to achieve the purposes for which the agency was created and to determine if areas existed in which greater efficiency of operations could be achieved.

### Administration

The State Bar Act, Article 320a1 V.A.C.S. was passed in 1939 by the Forty-sixth Texas Legislature. The Act provided for:

1. A Board of Directors.
2. Apportionment of the state into Bar Districts.
3. Mandatory membership in the State Bar of all attorneys licensed to practice in Texas.
4. Supreme Court preparation of rules and regulations for:
  - a. disciplining, suspending, and disbaring of attorneys at law;
  - b. Operation, maintenance and conduct of the State Bar;
  - c. A code of ethics governing the professional conduct of attorneys at law; and
5. An annual license or registration fee for members (initially set at \$4.00 per year).

The Act further provided that rules promulgated by the Supreme Court and any increase in the statutory membership fee must be voted upon and approved by the membership.

Purposes of the State Bar, as stated in Rules Governing the State Bar of Texas promulgated by the Supreme Court and approved by vote of the membership,

are:

1. The advancement of the administration of justice and the science of jurisprudence;
2. The encouragement of cordial intercourse among its members;
3. The improvement of relations between the Bench and the Bar and the public;
4. The protection of the professional interest of the members of the State Bar.

Exhibit I-0 lists State Bar and Bar-related programs and activities and attempts to classify the programs and activities into one or more of the statutory purposes for which the State Bar was created.

The Board of Directors, consisting of 30 members elected from the 17 geographical Bar Districts, has the statutory duty of enforcing the provisions of the State Bar Act. The Board of Directors is assisted by a staff of more than 100 full-time and part-time employees under the administrative direction of an Executive Director who is appointed by the board and serves at the board's pleasure. The staff of the State Bar of Texas is housed in the Texas Law Center at 201 West Fifteenth Street, in Austin.

The State Bar's personnel policies are similar to those of other state agencies in many respects although the Bar is not under the provisions of the legislative appropriations bills. Employees are members of the Texas State Employees Retirement System, State Employees Group Insurance Plan, and are covered by the Social Security Act. The Bar's policies provide for reimbursement of travel expenses limited to \$30 per day for room and meals and 15 cents per mile for use of personally-owned automobiles. Contracting and purchasing procedures are independent of the State Board of Control.

Members of the Board of Directors receive no compensation for their

EXHIBIT I-0

State Bar of Texas

Programs and Activities	Statutory Purposes of the State Bar of Texas			
	Advancement of Administration of Justice and the Science of Jurisprudence	Encouragement of Cordial Intercourse Among Members of the State Bar	Improvement of Relations Between the Bench, the Bar and the Public	Protection of the Professional Interest of Members of the State Bar
Officers and Directors	X	X	X	X
Staff	X	X	X	X
Texas Law Center	X	X	X	X
Texas Bar Foundation	X	X	X	X
Insurance Trust				
Texas Legal Protection Plan				
Texas Lawyers Insurance Exchange				
Texas Lawyers Credit Union				
Client Security Fund			X	
Professional Development				
Board of Legal Specialization				
Texlex, Inc.				
Bar Journal				
Conventions		X		
Membership		X		
Standards of Admission				
General Counsel				
Grievance Committees				
Lawyer Referral Service				
Texas Young Lawyers Association				
Governmental Affairs				
State Bar Book Store:				
Books and Tapes				
Legal Forms				
Grants:				
Adult Probation Master Plan	X			
Comprehensive Offender Manpower Program	X			
Criminal Justice Standards & Goals Implementation Project	X			
Criminal Defense Lawyer Project	X			
Center for Correctional Services	X			
Texas Center for the Judiciary	X			
Law in a Changing Society	X			
Counsel for Indigent Parolees	X		X	
Volunteers in Parole	X			



services, but they are reimbursed for necessary expenses incurred in the discharge of their official duties. Travel reimbursements are limited to \$30 per day and 15 cents per mile for use of personally- owned automobiles.

Exhibit I-1 shows names of Directors, terms of appointment, and individual attendance at director's meetings for 1975, 1976, and 1977. All members of the Board of Directors and of the State Bar must be licensed attorneys in good standing.

### Funding

The State Bar Act, in Section 4b, authorizes the prescribing of annual license or registration fees by the Supreme Court. Originally set by statute at \$4 per annum the fee now ranges from \$12.50 to \$65.00 per year per member. Increases in such annual license fees were promulgated by the Supreme Court and approved by vote of the membership in accordance with the statutory rules. Additional fees collected by the State Bar and used in its programs and activities are shown in Exhibit I-2.

Funds are also generated by several kinds of agency activities such as the book store, printshop, conventions, professional development and earnings of interest on deposits. Rental income, from tenants of the Law Center building, is pledged to the Law Center Fund for the payment of building operational expenses and retirement of outstanding indebtedness. Additional funds for special projects are received in the form of grants, principally from the Criminal Justice Division of the Governor's Office.

Funds of the Bar are deposited in Austin banks. State Bar membership dues are deposited under an Investment Management Agreement with a local bank which invests such funds, collects interest and dividends on the investments, pays such

EXHIBIT I-1

Board Members Attendance  
Fiscal Years 1975-1977  
State Bar of Texas

Current Board Members	Term of Office	Attendance at Meetings		
		<u>1975</u> *(5)	<u>1976</u> *(6)	<u>1977</u> *(8)
Preston E. Johnson	July 1976 to July 1979			8
Freeman M. Bullock	July 1976 to July 1979			8
B. R. Pravel	July 1976 to July 1979			7
Robert H. Roch	July 1976 to July 1979			6
Wiley Thomas	July 1976 to July 1979			7
Charles P. Storey	July 1976 to July 1979			6
John Clark	July 1976 to July 1979			8
Kleber Miller	July 1976 to July 1979			8
Joe K. Longley	July 1976 to July 1979			8
Frank W. Bake	July 1976 to July 1977			8
Vincent Rehmet, Jr.	July 1975 to July 1978		6	8
Howard Hoover	July 1975 to July 1978		6	8
Louis Weber, Jr.	July 1975 to July 1978		6	7

EXHIBIT I-1  
cont.

Current Board Members	Term of Office	Attendance at Meetings		
		1975 *(5)	1976 *(6)	1977 *(8)
Charles D. Butts	July 1975 to July 1978		6	7
Harry J. Schulz	July 1975 to July 1978		6	8
O. F. Jones, III	July 1975 to July 1978		6	8
Harlow Sprouse	July 1975 to July 1978		6	8
Edward McIntosh	July 1975 to July 1978		6	8
Joe Nagy	July 1975 to July 1978		6	7
Thor Gade	July 1975 to July 1978		6	7
Howard Waldrop	July 1977 to July 1980		New Member	
Joe B. Cannon	July 1977 to July 1980		New Member	
A. J. Watkins	July 1977 to July 1980		New Member	
Thomas H. Lee	July 1977 to July 1980		New Member	
Waller M. Collie, Jr.	July 1977 to July 1980		New Member	
William F. Alexander	July 1977 to July 1980		New Member	
James A. Showers	July 1977 to July 1980		New Member	
Dan E. Mayfield	July 1977 to July 1980		New Member	

EXHIBIT I-1  
cont.

Current Board Members	Term of Office	Attendance at Meetings		
		1975 *(5)	1976 *(6)	1977 *(8)
Robert D. Jones	July 1977 July 1980			New Member
C. G. Whitten	July 1977 to July 1980			New Member

\*Total meetings held each fiscal year.

Past Members				
J. Harris Morgan	July 1974 to July 1977	4	6	8
Joe D. Clayton	July 1974 to July 1977	5	5	5
Gerald P. Coley	July 1974 to July 1977	5	6	8
Frank Abraham	July 1974 to July 1977	5	5	8
John Estes	July 1974 to July 1977	5	5	8
Henry Schlinger	July 1974 to July 1977	4	5	7
William L. Hughes, Jr.	July 1974 to July 1977	5	5	7
Jack M. Tarver	July 1974 to July 1977	5	5	7
William B. Hilgers	July 1974 to July 1977	5	6	8
W. Truett Smith	July 1974 to July 1977	5	6	8
Donn C. Fullenweider	July 1973 to July 1976	5	6	

EXHIBIT I-1  
cont.

Current Board Members	Term of Office	Attendance at Meetings		
		<u>1975</u> *(5)	<u>1976</u> *(6)	<u>1977</u> *(8)
Hartford Prewett	July 1973 to July 1976	5	6	
Charles M. Haden	July 1973 to July 1976	5	4	
John Eckel	July 1973 to July 1976	5	4	
Frank C. Moore	July 1973 to July 1976	5	5	
Timothy Kelley	July 1973 to July 1976	5	5	
Beale Dean	July 1973 to July 1976	5	6	
Fred B. Werkenthin	July 1973 to July 1976	5	4	
Luis Garcia	July 1973 to July 1976	5	6	
David J. Kreager	July 1973 to July 1976	5	6	
David A. Grose**	July 1974 to July 1975	3		

\*Indicates number of meetings each year.

\*\*Mr. Grose was appointed to fill the unexpired term of Mr. Jake Jarmon.

EXHIBIT I-2  
State Bar of Texas  
Schedule of Fees

Type of Fee	*Statutory Maximum	Actual 1978
<u>Annual Membership Fees:</u>		
Lawyers 70 years old or older	\$ -0-	\$ -0-
Lawyers licensed on or after December 1	12.50	12.50
Lawyers licensed 3 years or less	25.00	25.00
Non-resident members licensed more than 3 years	32.50	32.50
Lawyers licensed more than 3 years	65.00	65.00
<u>Reinstatement Dues and Penalties</u>	-0-	-0-
<u>Admissions</u>		75.00
<u>Specialization Fees:</u>		
Application (non-refundable if rejected or withdrawn)	-0-	100.00
Examination	-0-	150.00
Annual Renewal	-0-	50.00

\*Fees are prescribed by the Supreme Court after submission to the registered to the registered members of the State Bar and the receipt of a favorable vote on the proposed fees. At least 51 percent of the registered members must vote and a simple majority favoring the proposed fees will allow the Supreme Court to adopt the proposed fee schedule.

earnings (less 7 1/2 percent management fees) and principal to the Bar, schedules maturities to coincide with the cash requirements of the Bar for current budgetary expenses, and returns balance of funds to the Bar upon termination of the agreement. Earnings from this contract and agreement are shown in the following summary:

<u>Items</u>	<u>Years Ended May 31</u>		
	<u>1975</u>	<u>1976</u>	<u>1977</u>
Earnings	\$ 74,746	\$ 31,614	\$ 36,737
Less-Management Fee	<u>5,606</u>	<u>2,371</u>	<u>2,755</u>
Net Earnings	<u>\$ 69,140</u>	<u>\$ 29,243</u>	<u>\$ 33,982</u>
Average Balance	<u>\$727,441</u>	<u>\$496,912</u>	<u>\$ 639,718</u>
Percent Yield	<u>9.50</u>	<u>5.88</u>	<u>5.31</u>

#### Revenues and Expenses

Revenues and Expenses of the State Bar of Texas are shown in Exhibit I-3 for the fiscal year ended May 31, 1977. Additional details of departmental transactions for 1977 are shown in Exhibits I-3A and I-3B. Revenues, Expenses, and Fund Balances for the three-year period 1975 through 1977 are shown in Exhibit I-4. Comments which follow will address each of the five funds shown in Exhibit I-3.

#### General Fund

The General Fund is the primary operating fund of the Bar. This fund receives the bulk of revenues and expenditures of the programs and activities of the Bar. Exhibit I-3A provides detail of Departmental Expenses using customary object of expense categories. Exhibit I-3B provides details of the Professional Development Projects by types of services provided. Accounts of all funds are

EXHIBIT 1-3

State Bar of Texas  
Revenues and Expenses  
Fiscal Year Ended May 31, 1977

	General Fund	Texas Law Center Fund	Special Projects Fund	Print Shop Service Fund	Combined Grant Funds	Elimination of Inter-fund Items	Combined Funds
						Debits	Credits
<b>Revenues:</b>							
Membership Dues	\$1,418,250	-	\$ -	\$ -	\$ -	\$ -	\$ -
Professional Development	689,305	-	-	-	-	-	-
Bar Journal	118,922	-	-	-	-	-	-
Convention	126,377	-	-	-	-	-	-
Public Affairs	7,157	-	-	-	-	-	-
Pledges	-	902,292	-	-	-	-	-
Rents	-	37,507	-	-	-	-	-
Admission Registration Fees	-	-	165,890	-	-	(E) 21,674	-
Specialization Examination Fees	-	-	44,150	-	-	-	-
Grants	-	-	-	-	1,390,021	(E) 25,000	-
Interest	34,401	-	-	-	-	-	-
Management and Accounting Fees	147,581	1,728	-	-	-	(B) 89,858	-
Printing, Postage and Xerox	4,538	-	-	928,103	(C&D)	656,322	-
Other	7,927	146	3,184	-	48,964	-	-
<b>Total Revenues</b>	<b>\$2,554,458</b>	<b>\$ 941,673</b>	<b>\$ 213,224</b>	<b>\$ 928,103</b>	<b>\$1,438,985</b>	<b>792,854</b>	<b>\$5,283,589</b>

	General Fund	Elimination of Inter-fund Items	Combined Funds
		Debits	Credits
<b>Expenses:</b>			
<b>General Fund - Departmental:</b>			
Officers and Directors	137,912	-	33,848
Executive	137,862	-	3,351
General Counsel	265,869	-	11,902
Membership	81,927	-	18,677
Finance	128,696	-	3,798
Public Affairs	186,908	-	(C&E) 47,106
Lawyer Referral	27,158	-	(C) 2,415
Government Affairs	54,548	-	(C) 3,827
<b>Total</b>	<b>1,040,664</b>	<b>792,854</b>	<b>104,064</b>



EXHIBIT I-3  
cont.

	General Fund	Texas Law Center Fund	Special Projects Fund	Print Shop Service Fund	Combined Grant Funds	Elimination of Inter-fund Items	Combined Funds
						Debits	Credits
Administration	30,714	-	-	-	-	-	(C) 889
Committee Activities	25,337	-	-	-	-	-	(C) 5,223
Publications	227,851	-	-	-	-	-	(C) 11,501
Professional Development	715,277	-	-	-	-	-	(C) 348,140
Junior Bar Activities	72,897	-	-	-	-	-	(C) 8,019
Non-departmental	358,471	-	-	-	-	-	(C) 20,252
Other Funds - Functional:							
Salaries and Related Benefits	-	25,440	149,943	133,463	361,727	-	-
Occupancy Costs	-	1,969	26,201	7,550	79,666	-	(E) 21,674
Printing, Supplies and Postage	-	7,039	46,256	630,324	112,987	-	(C&D) 162,374
Travel and Entertainment	-	1,783	19,940	3,092	196,157	-	-
Equipment Rent & Maintenance	-	2,353	602	50,965	15,237	-	-
Contractual Services	-	10,289	7,277	6,486	561,676	-	-
Interest	-	151,493	-	-	-	-	-
Depreciation	-	84,752	4,252	10,238	-	-	-
Management and Accounting Fees	-	-	13,787	29,925	46,146	-	(B) 89,858
Other	-	304	26,765	28,595	65,369	-	-
Total Expenditures	\$2,451,427	\$ 285,422	\$ 295,023	\$ 900,638	\$1,438,985	-	\$ 792,854
Excess (Deficit) of Revenues Over Expenditures	\$ 103,031	\$ 656,251	\$ (81,799)	\$ 27,465	\$ -	\$ 792,854	\$ 704,948

EXHIBIT I-3A

State Bar of Texas  
 General Fund - Detail of Departmental Expenses  
 Fiscal Year Ended May 31, 1977

General Fund Departments

	Officers and Directors	Executive	General Counsel	Membership	Finance	Publications	Public Affairs	Administrative	Lawyer Referral	Government Affairs	Professional Development	Junior Bar Activities	Other
Salaries and related expenses	\$ 13,356	\$ 111,139	\$152,543	\$39,775	\$111,276	\$ 41,055	\$ 93,413	\$ 26,178	\$ 9,654	\$27,730	\$ 36,683	\$ 12,541	-
Printing, supplies and postage	41,297	5,179	5,784	38,196	10,807	179,101	15,458	1,500	4,120	5,194	8,411	10,679	-
Telephone	9,968	5,552	7,658	2,240	3,860	2,785	7,187	1,295	18,629	1,929	7,644	4,307	-
Travel and meetings	62,575	6,388	1,552	-	102	-	981	16	185	853	1,047	30,263	-
Equipment rent and maintenance	320	4,870	2,378	650	870	134	1,212	552	36	1,051	808	99	-
Dues and subscriptions	42	4,308	4,531	80	641	331	1,167	69	85	610	944	35	-
Other	3,436	426	5,086	986	1,140	4,445	6,400	1,104	(5,542)	17,181	1,627	(859)	13,371
Projects	6,918	-	86,337	-	-	-	61,090	-	-	-	654,047	-	-
Committees	-	-	-	-	-	-	-	-	-	-	4,066	15,832	25,337
Convention expenses	-	-	-	-	-	-	-	-	-	-	-	-	127,997
Provision for Clients' Security	-	-	-	-	-	-	-	-	-	-	-	-	-
Fund losses	-	-	-	-	-	-	-	-	-	-	-	-	25,000
Depreciation	-	-	-	-	-	-	-	-	-	-	-	-	18,051
Provision for doubtful accounts	-	-	-	-	-	-	-	-	-	-	-	-	3,000
Audit	-	-	-	-	-	-	-	-	-	-	-	-	10,450
Investment management fees	-	-	-	-	-	-	-	-	-	-	-	-	2,755
Occupancy costs	-	-	-	-	-	-	-	-	-	-	-	-	157,847
	<u>\$ 137,912</u>	<u>\$ 137,862</u>	<u>\$265,869</u>	<u>\$81,927</u>	<u>\$128,696</u>	<u>\$227,851</u>	<u>\$186,908</u>	<u>\$ 30,714</u>	<u>\$ 27,158</u>	<u>\$54,548</u>	<u>\$715,277</u>	<u>\$ 72,897</u>	<u>\$383,808</u>

EXHIBIT I-3B

State Bar of Texas  
Professional Development Projects - Detail of Revenues and Expenses  
Fiscal Year Ended May 31, 1977

	<u>Revenues</u>	<u>Expenses</u>
Institutes	\$236,136	\$226,826
Advanced courses	133,509	61,219
Videotape courses	55,125	91,849
Skills courses	42,355	69,959
Opinions service	30,943	15,531
Real estate forms and manual	169,128	57,555
Institute books	16,609	19,379
Texas Lawyers Weekly Digest	2,319	110,454
Miscellaneous	3,181	1,275
Professional development committees	-	4,066
Professional development administrative	-	<u>57,164</u>
Totals	<u>\$689,305</u>	<u>\$715,277</u>

EXHIBIT 1-4

State Bar of Texas  
Revenues, Expenses, and Fund Balances -Various Funds  
Fiscal Years Ended May 31, 1975, 1976 and 1977

	Fiscal Years Ended May 31		
	1975	1976	1977
<u>General Fund</u>			
Fund Balance, beginning of year	\$ 205,604	\$ 104,555	\$ 143,069
Revenues	1,895,078	2,285,914	2,554,458
Expenses	1,996,127	2,247,400	2,451,427
Excess (Deficit) Revenues over Expenses	(101,049)	38,514	103,031
Fund Balance, end of year	\$ 104,555	\$ 143,069	\$ 246,100
<u>Texas Law Center Fund</u>			
Fund Balance, beginning of year	\$1,360,049	\$2,965,332	\$3,846,818
Revenues	1,804,217	1,007,656	941,673
Expenses	198,934	126,170	285,422
Excess (Deficit) Revenues over Expenses	1,605,283	881,486	656,251
Deduct-Donation of Plaza and Parking Area under Plaza to the State of Texas			(700,000)
Reduction in Fund Balance			(43,749)
Fund Balance, end of year	\$2,965,332	\$3,846,818	\$3,803,069
<u>Special Projects Fund</u>			
Fund Balance, beginning of year	\$ -0-	\$ 37,552	\$ (10,332)
Revenues	215,344	276,398	213,224
Expenses	177,792	324,282	295,023
Excess (deficit) Revenues over Expenses	37,552	(47,884)	(81,799)
Fund Balance, end of year	\$ 37,552	\$ (10,332)	\$ (92,131)
<u>Print Shop Service Fund</u>			
Fund Balance, beginning of year	\$ 55,555	\$ 78,148	\$ 108,839
Revenues	410,934	644,250	928,103
Expenses	388,341	613,559	900,638
Excess (Deficit) Revenues over Expenses	22,593	30,691	27,465
Fund Balance, end of year	\$ 78,148	\$ 108,839	\$ 136,304
<u>Combined Grant Funds</u>			
Fund Balances, Beginning of year	\$ -0-	\$ -0-	\$ -0-
Revenues	54,178	1,256,768	1,438,985
Expenses	54,178	1,256,768	1,438,985
Excess (Deficit) Revenues over Expenses	-0-	-0-	-0-
Fund Balances, end of year	-0-	-0-	-0-

EXHIBIT I-4A

State Bar of Texas-Variou Funds  
 Revenues and Expenses-Fiscal Years Ended May 31, 1975, 1976, 1977  
 Projections of Revenues and Expenses-Fiscal Years 1978 thru 1982

<u>General Fund</u>	<u>Revenues</u>	<u>Expenses</u>	Excess (Deficit) Revenues over <u>Expenses</u>
1975	\$1,895,078	\$1,996,127	\$(101,049)
1976	2,285,914	2,247,400	38,514
1977	2,554,458	2,451,427	103,031
<u>Projections</u>			
1978	2,932,518	2,701,473	231,045
1979	3,366,531	2,977,023	389,508
1980	3,864,776	3,280,679	584,097
1981	4,436,763	3,615,308	821,455
1982	5,093,404	3,984,069	1,109,335

Special Projects Fund

Note: Data is too erratic to establish trend lines.

Print Shop Service Fund

1975	\$ 410,934	\$ 388,341	\$ 22,593
1976	644,250	613,559	30,691
1977	928,103	900,638	27,465
<u>Projections</u>			
1978	1,280,782	1,258,191	22,591
1979	1,767,479	1,757,693	9,786
1979	1,767,479	1,757,693	9,786
1980	2,439,121	2,455,497	(16,376)
1981	3,365,987	3,430,329	(64,342)
1982	4,645,061	4,792,170	(147,109)

Combined Grant Funds

1975	\$ 54,178	\$ 54,178	-0-
1976	1,256,768	1,256,768	-0-
1977	1,438,985	1,438,985	-0-
<u>Projections</u>			
1978	1,651,955	1,651,955	-0-
1979	1,896,444	1,896,444	-0-
1980	2,177,118	2,177,118	-0-
1981	2,499,331	2,499,331	-0-
1982	2,869,232	2,869,232	-0-

subject to outside independent audit and no exceptions were noted in the audit of the fiscal year ended May 31, 1977.

Texas Law Center Fund

The Texas Law Center Fund was established to accumulate the revenues (pledges and rentals) and expenditures and to account for the debt incurred in constructing the Law Center office building. A summary statement of the status of this fund at June 23, 1978 follows:

Texas Law Center

Cost to May 31, 1978		\$8,044,313
Estimated Cost to Complete:		
Finishing 6th floor		15,000
Historical Pavilion		50,000
Designation of Memorial Rooms		6,000
Hall Fixtures and Furnishings		<u>5,000</u>
Actual and Estimated (\$76,000) Cost		<u>\$8,120,313</u>
Source of Funds:		
Gifts, grants, etc. to May 31, 1978		\$4,166,472
Special Assessments to June 20, 1978		<u>1,197,477</u>
Total Funds Received to June 20, 1978		<u>\$5,363,949</u>
Special Assessments Levied		\$3,611,052
Assessments Received to June 20, 1978		<u>1,197,477</u>
Assessments Receivable, June 20, 1978		<u>\$2,413,575</u>
<u>Summary</u>		
Cash in Bank, May 31, 1978		\$ 147,147
Pledges Receivable, May 31, 1978	\$791,075	
Less, Reserve for Uncollectable	<u>100,000</u>	691,075
Assessments Receivable		<u>2,413,575</u>
Total-Funds and Receivables		\$3,251,797
Less: Note Payable, June 23, 1978		<u>\$2,655,000</u>
Funds for Completing Building and making Interest Payments		<u>\$ 596,797</u>

### Special Projects Fund

This fund is comprised of the operations of the Standards of Admission and the Board of Legal Specialization activities. Standards of Admission, working with the assistance of Admissions Committees in each Bar district, determines that each person who files a Declaration of Intent to Study Law is of good moral character and fitness. Results of the Admissions Committees investigation of such declarants and the committees' recommendations are certified by this office of the Bar to the Board of Law Examiners. The Bar collects a \$75 fee from each declarant to pay the costs of such investigations.

The Board of Legal Specialization examines areas of law practice and issues certificates attesting to the possession of specified qualifications in certain designated areas of the practices of law. A schedule of the fees is shown in Exhibit I-2 herein.

A statement of the revenues and expenses of the Standards of Admission and the Board of Legal Specialization for the fiscal year ended May 31, 1977 follows.

	Standards of Admission	Board of Legal Specialization	Total
Revenues:			
Registration Fees	\$169,900	\$ 44,150	\$214,050
Refunds	(4,010)		(4,010)
Sponsors & Award Ceremony		3,175	3,175
Interest	<u>9</u>		<u>9</u>
Total	\$165,899	\$ 47,325	\$213,224
Expenses:			
Salaries & Related Benefits	\$100,877	\$ 49,066	\$149,943
Occupancy Costs	16,920	9,281	26,201
Printing, Supplies, and Postage	34,341	11,915	46,256
Travel & Entertainment	1,857	18,083	19,940
Equipment Rent & Main.	602	-	602
Contractual Services	-	7,277	7,277
Depreciation	3,669	583	4,252
Management & Acct. Fees	9,021	4,766	13,787
Other	<u>23,809</u>	<u>2,956</u>	<u>26,765</u>
Total	\$191,096	\$103,927	\$295,023
Net (Loss)	<u>\$(25,197)</u>	<u>\$(56,602)</u>	<u>\$(81,799)</u>

#### Print Shop Service Fund

The Print Shop Service Fund accumulates revenues and expenses relating to printing, postage and mail service, and xeroxing operations for all funds of the Bar. This activity also provides services to bar-related groups or organizations which are tenants of the Law Center Office Building. The volume of transactions in this fund exceeded \$900,000 for the fiscal year ended May 31, 1977. Since this activity approximates 25 percent of the total operating expenses of the State Bar (excluding budgets of the Texas Law Center Fund and Grant Funds) a request was made of the



Systems-Administrative Services Division of the State Auditor's Office to review the print shop component of this fund. Several areas of print shop operations were deemed to need improvement according to the report from the Systems-Administrative Services Division of the State Auditor's Office. Areas of the print shop operations needing improvement were noted in the report as follows:

1. Various elements of costs are coded together thereby creating difficulty in identifying elements needed to evaluate the performance of the print shop in the use of its resources. Changes were recommended.
2. During the period under review (1977-78) print shop operations totaled \$795,599. Approximately \$447,000 of the total was for "outside printing". Most outside printing is purchased at premium prices because of time constraints. Such practices rapidly cancel the benefits of in-house printing services.
3. Stocks of printed materials, which are held for sale through the Bar's bookstore unit, occupy vitally needed production space in the print shop. Such materials do not require temperature/humidity controlled storage and should be stored elsewhere.
4. Copy machines are not purchased on a bid basis. Volume of copies produced would not justify the capacity and costs of the Bar's copiers under Board of Control policies.
5. Production on presses are at half the normal level for the equipment owned and operated in the State Bar's print shop.
6. Additional areas of lesser importance were covered in the report and suggestions were made for changes to effect improvements in the print shop activity.

#### Combined Grant Funds

Combined Grant Funds consist of several grants established by contract with the grantors. All grant funds are restricted for the purposes designated in the separate grant documents. The Criminal Justice Division of the Governor's Office has been the principal grantor during the period under review as shown in Exhibit I-5.

## EXHIBIT I-5

State Bar of Texas  
Grant Expenditures

Governor's Office- Criminal Justice Division Grants	Grant Periods Ending in			
	1975	1976	1977	Total
Adult Probation Master Plan	\$ -	\$ -	\$ 143,510	\$ 143,510
Comprehensive Offender Manpower Program	-	155,833	219,283	375,116
Criminal Justice Standards and Goals Implementation Project	21,488	57,946	-	79,434
Criminal Defense Lawyers Project	149,424	159,019	175,280	483,723
Center for Correctional Services	-	-	206,112	206,112
Texas Center for the Judiciary	315,237	361,500	373,086	1,049,823
Law in a Changing Society	333,677	454,804	257,663	1,046,144
Counsel for Indigent Parolees	41,019	35,569	-	76,588
Volunteers in Parole	63,625	-	-	63,625
Total-CJD Grants	<u>\$924,470</u>	<u>\$1,224,671</u>	<u>\$1,374,934</u>	<u>\$3,524,075</u>
<u>Governor's Office-Other:</u>				
<u>Health Education and Welfare Protection and Advocacy- Developmental Disa- bilities</u>	\$ -	\$ 104,351	\$ 165,098	\$ 269,449
<u>Committee on Aging Nursing Home Ombudsman</u>	-	-	15,370	15,370
Total-Other Grants	<u>\$ -</u>	<u>\$ 104,351</u>	<u>\$ 180,468</u>	<u>\$ 284,819</u>
Total Grants Expenditures	<u>\$924,470</u>	<u>\$1,329,022</u>	<u>\$1,555,402</u>	<u>\$3,808,894</u>

Brief explanatory comments follow which describe the purposes of three grants that appear to be typical of the groups.

1. Criminal Defense Lawyers Project - The stated goal of this project is to train lawyers to effectively represent indigent defendants by means of skills courses. Teaching methods include practical applications, lectures, demonstrations and videotapes. Lecturers include outstanding trial lawyers, judges and educators. This project, currently in its sixth year has attracted the attendance of approximately 800 lawyers each year.

2. Center for Correctional Services - The stated purpose of this grant is to "provide otherwise unavailable legal and law-related services to the correctional system." Services provided legal counseling and representation to inmates of the Department of Corrections on complaints of violations of the inmates' civil rights during incarceration. This program also provides transportation from the Department of Corrections to the county of residence for indigent parolees.

3. Texas Center for the Judiciary - This grant provides funds to the Texas Center for the Judiciary to be used in continuing education programs for the judiciary and the judiciary's support personnel. Support is also provided for the judicial section of the State Bar and its various committees. Education programs consist of such things as procedural and substantive law and court administration.

The programs of the center are accomplished through seminars, workshops, and conferences. The center also prepares and published benchbooks and manuals for the judiciary and the judiciary's support personnel.

#### Summary

The State Bar of Texas follows "preferred practices" in the management of its resources in much the same manner as other state agencies which do not come

under the appropriations process and which do not have their funds in the State Treasury. The Bar's payroll, leave and travel policies for officers and employees are substantially in accord with the appropriate provisions of the current General Appropriations Act although the Bar is not subject to the appropriations process.

Areas in which the Bar does not follow "preferred practices" occur principally with regard to purchasing and leasing of supplies and equipment. Formal bids were not called for with regard to the following:

1. Purchases of office equipment and furniture.
2. Depository for funds of the Bar.
3. Rental of copying equipment.
4. Contracts for "outside printing".
5. Lease for office space.
6. Printing materials and supplies.
7. Office supplies.

Subsequent to the period covered by this report, the Bar adopted the policy of calling for bids from banks which desire to act as the depository for State Bar funds.

Also subsequent to the period covered by this report the leasing of office space became meaningless because of the Bar's construction of the Bar-owned Law Center Building, into which its offices were moved in 1976.

Areas noted during the examination which apparently have potential for improved performance are:

1. Print shop operations particularly in the area of purchased "outside printing services" and printing press productivity.
2. Standards of Admission.
3. Legal Specialization.

## Criterion 2

An identification of the objectives intended for the agency or advisory committee and the problem or need which the agency or advisory committee was intended to address, the extent to which the objectives have been achieved and any activities of the agency in addition to those granted by statute and the authority for these activities.

The review under this criterion centered on an identification of the agency's statutory objectives as they related to the perceived need and the extent to which agency methods used can reasonably be expected to achieve those objectives. Statutes were reviewed to determine if objectives described in the self-evaluation report presented an accurate reflection of statutory duties. Agency viewpoints were sought to provide additional clarification; and appropriate files were reviewed to collect and verify selected data presented under this criterion.

The State Bar of Texas derives its authority from Title 14, Article 320a1, V.A.C.S. and "Rules Governing The State Bar of Texas" Title 14-Appendix, Article I through Article XIII of V.A.C.S. Rules Governing the State Bar were promulgated by the Supreme Court of Texas and, as required by Article 320a-1, voted upon favorably by members of the Bar.

The primary objectives of the Bar, as derived from analysis of the State Bar Act and the Rules Governing The State Bar of Texas, are:

1. Disciplining, suspending and disbaring attorneys at law
2. Prescribing a code of ethics governing the professional conduct of attorneys at law
3. Preventing the unauthorized practice of law
4. Annual licensing of all attorneys who are qualified to practice law in Texas

5. Operation, maintenance, and conduct of the State Bar

In addition to the five objectives, all subject to rules promulgated by the Supreme Court, Section I of Article III, Title 14-Appendix, V.A.C.S. states that the purposes of the Bar are:

1. The advancement of the administration of justice and the science of jurisprudence
2. The encouragement of cordial intercourse among its members
3. The improvement of the relations between the Bench and the Bar and the public
4. The protection of the professional interest of members of the State Bar.

These four purposes are also part of the State Bar Rules promulgated by the Supreme Court.

Rules promulgated by the Supreme Court, therefore, are the controlling element of all objectives, purposes, programs and activities of the State Bar of Texas. All rules promulgated by the Supreme Court must be submitted in ballot form to each registered member of the State Bar of Texas for a vote thereon. At least fifty-one percent (51%) of the members must vote for the election to be valid, with a simple majority of the votes necessary for passage. By this procedure, members of the State Bar are in effect self-governing and capable of writing the law under which they operate. No other regulatory agency has control of its operations which compare favorably with the degree of control exercised by the State Bar.

The State Bar of Texas performs only two functions which are typical of the customary regulatory agency and these two functions are not performed in the customary manner. The functions which parallel those of other regulatory

agencies are: 1) enforcement; and 2) licensing. These two subjects are addressed separately in the following paragraphs.

#### Enforcement

Enforcement functions of the State Bar consist of: 1) disciplining, suspending and disbaring attorneys at law; and 2) preventing the unauthorized practice of law.

The State Bar of Texas depends almost entirely upon its members to investigate and prosecute disciplinary complaints on a non-compensated basis. There is no participation by the State Bar's Board of Directors or its administrative staff in this important enforcement function unless by request from the District Grievance Committees which have full autonomy in the hearing and disposition of grievances. There is no requirement in the law or the State Bar's rules which requires regular reporting of data concerning the committees' hearings of grievances and the disposition of such cases.

Therefore the degree to which the State Bar has attained its objective in disciplining, suspending and disbaring attorneys at law could not be ascertained in this review because the necessary records have not been received from the District Grievance Committees.

Unauthorized practice of law complaints are also investigated and prosecuted by the District Grievance Committees. In addition, there is a State Bar Unauthorized Practice Committee, appointed by the president of the Bar, and consisting of seven members, which has concurrent jurisdiction with the Grievance Committees so far as concerns institution of unauthorized practice suits and proceedings. The primary activity of the Unauthorized Practice Committee is to provide advice and assistance to the District Grievance Committees upon request.

During the period under review the complaints processed for unauthorized practice of law by the District Grievance Committees (there are 40 Grievance Committees in the 17 Bar Districts) were not reported to State Bar headquarters in Austin on a consistent and timely basis. Therefore, statistical data, on a statewide basis, showing numbers of complaints filed and the District Grievance Committees disposition of such unauthorized practice of law complaints was unavailable for review and assessment. Due to lack of the necessary performance data no assessment could be made of the State Bar's achievement of its objective in preventing the unauthorized practice of law.

#### Licensing

The State Bar Act, Article 320a-1, Section 4, Subdivisions (b) and (c) empower the Supreme Court to prescribe a license fee for members of the Bar. Fees in excess of the \$4 per annum rate stated in subdivision (b) of the Act must be submitted to all registered members for approval. At least 51 percent of the members must vote in the election with a simple majority necessary for approval of the proposed license fee. Presently the annual fee for lawyers licensed more than three years is \$65. All license fees are paid to the clerk of the Supreme Court of Texas who deposits the funds in a local bank for the benefit and use of the State Bar.

The Supreme Court in its Rules Governing The State Bar of Texas, Title 14-Appendix, Article IV, Section 5, V.A.C.S., provides for suspension of members of the Bar for non-payment of the annual license fee. At the end of ninety days, without payment of the membership dues, the delinquent member's name is removed from the rolls of the State Bar by the clerk of the Supreme Court.

Striking a name from the membership rolls for non-payment of the annual



license fee automatically suspends the delinquent member and it then becomes the duty of county, district, and appellate court judges to deny such person the privilege of practicing in such courts. It is interesting to note that this is the most effective enforcement device available for the suspension of an attorney and that this prerogative is exercised by the Supreme Court clerk rather than by the State Bar of Texas. No monetary penalties are invoked for late payment of the annual license fees as is the case with other regulatory agencies.

The State Bar is highly successful in attaining its objective of licensing all attorneys who practice law in Texas because: 1) practice of law in Texas is limited to members of the State Bar; and 2) all members of the State Bar must pay the annual license fee or lose the license to practice.

Three of the five identified objectives of the State Bar of Texas were addressed in the preceding discussion of Enforcement and Licensing functions of the Bar. The remaining objectives are now addressed separately under: 1) Code of Professional Responsibility; and 2) Operation, Maintenance and Conduct of the State Bar.

#### Code of Professional Responsibility

Pursuant to authority granted in Article 320a-1, Section 4(a), V.A.C.S., the Supreme Court of Texas prescribed a code of ethics governing the professional conduct of attorneys at law. The code of ethics is Section 8 of Title 14-Appendix, State Bar Rules and titled "Code of Professional Responsibility." The code consists of nine canons, 137 statements of Ethical Considerations and 40 Disciplinary Rules. Exhibit II-1 herein lists the nine canons (accepted principles or rules) which provide the basis for the Statements of Ethical Considerations and Disciplinary Rules.

The Grievance Committees of the 17 State Bar Districts are directed by law

EXHIBIT II-1

State Bar of Texas  
Code of Professional Responsibility

Canon	Statements of	
	Ethical Considerations	Disciplinary Rules
1. A lawyer should assist in maintaining the integrity and competence of the legal profession.	6	3
2. A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available.	32	10
3. A lawyer should assist in preventing the unauthorized practice of law.	9	3
4. A lawyer should preserve the confidences and secrets of a client.	6	1
5. A lawyer should exercise independent professional judgement on behalf of a client.	24	7
6. A lawyer should represent a client competently.	6	2
7. A lawyer should represent a client zealously within the bounds of the law.	39	10
8. A lawyer should assist in improving the legal system	9	2
9. A lawyer should avoid even the appearance of professional impropriety.	6	2
Totals	<u>137</u>	<u>40</u>

to receive complaints of professional misconduct alleged to have been committed by attorneys within its district. The Grievance Committees are empowered to investigate complaints, call witnesses, dismiss complaints, write reprimands, decide whether the reprimand will be private or public, and pursue the matter in a district court if the person receiving the reprimand refuses to agree to the terms of such reprimand. The actions of such grievance committees are autonomous and independent of the authority of the State Bar. Actions of the district grievance committees are not consistently reported to the State Bar. Therefore, the degree of attainment of this objective could not be determined because the necessary data was unavailable.

#### Operation, Maintenance and Conduct of the State Bar

The major operating programs and activities of the State Bar of Texas bear little resemblance to the programs and activities of the customary regulatory state agency. As previously stated herein, only two activities are identified as regulatory in nature and these two activities (enforcement and licensing) are not performed by the State Bar in the same manner as performed by other such agencies. The basic enforcement activity is performed by 40 grievance committees located in the 17 Bar Districts throughout the State of Texas. The licensing activity is shared with the Supreme Court of Texas in that all license fees are paid to the clerk of the Supreme Court who deposits the money in a local (Austin) bank which then transfers the money to the accounts of the State Bar of Texas.

The major programs and activities of the State Bar are similar to those of professional societies or organizations which have as their purpose the advancement of the profession, the protection of the interests of its members and of the general public, and in acting in a representative capacity for the profession. Three

populations or groups in the State of Texas, which have both a regulatory agency and a professional society or association are:

	<u>State Regulatory Agency</u>	<u>Professional Society or Association</u>
Board of Medical Examiners Texas Medical Association	X	X
Real Estate Commission Texas Association of Realtors	X	X
Texas State Board of Public Accountancy Texas Society of Certified Public Accountants	X	X

In each of these three instances, practitioners of the profession must be licensed by the state regulatory agency which also performs the other regulatory functions of examination of candidates, promulgation of rules of professional conduct, and enforcement of the rules and provisions of the statutes under which they operate. Unlike the State Bar, where membership is a prerequisite to the practice of law in Texas, membership in the medical, real estate and accounting professional organizations are voluntary as shown by the following tabulation:

<u>Professions of</u>	<u>Licensees</u>	<u>Membership Professional Organization</u>
Medicine	16,700	14,700
Real Estate	119,462	41,000
Accountancy	16,278	12,241
Legal	30,500	30,500

Programs or activities of the State Bar which parallel the programs and activities of the professional associations or societies are:

1. Publications

Publishes the Texas Bar Journal which is the major communications medium of the Bar to its members.

2. Conventions

Plans, organizes and produces the annual convention for members of the Bar.

3. Texas Bar Foundation

Finances programs in continuing legal education and supports projects with little chance of finding financial support elsewhere.

4. Lawyer Referral Service

Refers clients in need of legal assistance to attorneys in the clients' area of the state.

5. Government Affairs

Prepares and submits legislative programs affecting the legal profession in Texas. In 1976-77 the legislation included 16 separate bills, eleven (11) of which passed in the Sixty-fifth Session of the Texas Legislature. Actively supports other legislation which is considered favorable by the Bar and actively opposes all legislation which is considered unfavorable by the Bar.

6. Professional Development

Assists in the preparation of course materials used in an extensive continuing education programs. Conducts numerous seminars and institutes on a wide spectrum of subjects related to the legal profession and the practice of law in Texas.

7. Print Shop

Prints course materials used in the continuing education programs. Prints and stocks legal forms and documents which are sold to attorneys and others through the Bar's books, tapes and forms store.

8. Texas Legal Protection Plan, Inc.

Markets prepaid legal services policies to employee groups throughout the State of Texas.

9. Books and Tapes Fund

Funds come from sales of books, tapes and legal forms to lawyers. This activity is a part of the continuing education program.

10. Client Security Fund

Established and funded by the State Bar, this fund is for the purpose of ameliorating losses suffered by clients through dishonesty of their lawyers. When established in 1975, general revenue of the State Bar in the amount of \$25,000 was appropriated to the fund and another \$25,000 has been appropriated for 1977-78.

11. Insurance Trust

The Insurance Trust provides a group insurance plan of life insurance, health, disability income, accidental death and dismemberment and office overhead insurance to members of the State Bar.

The trust also sponsors a professional liability program which offers malpractice insurance to members of the State Bar.

12. Texas Lawyers Insurance Exchange

This non-profit reciprocal exchange insurance company will be run by State Bar members who buy their malpractice insurance from the company. Initial financing to make this program operational is \$1.5 million which is being raised by the sale of "surplus debentures" which bear interest at the rate of 6 percent per annum.

13. Texlex, Inc.

This activity is under a ten-year contract with Mead Data Central, Inc. (MDC) to assist in developing a computerized legal research system. Texlex, Inc. is a wholly-owned subsidiary of the State Bar of Texas and operates on funds advanced by MDC. Subscribers to the services provided by the data system will eventually reimburse MDC for its costs. No costs will be paid by the State Bar and no income will accrue to the Bar.

There is no way to assess the achievements of the State Bar of Texas in these 13 listed programs or activities in comparison to the achievements of other professional organizations or societies because data on such organizations are not

available. However, the number and diverse nature of the services provided by the State Bar of Texas to its members indicates considerable diligence and innovativeness on the part of the administrative officers and staff of the Bar. Therefore, it is our impression that the State Bar has performed at an acceptable level in these non-regulatory programs and activities.

#### Summary

The State Bar of Texas is unlike other regulatory agencies in that the Bar performs only two regulatory functions: 1) enforcement; and 2) licensing. These two regulatory functions are not performed in a manner consistent with the manner in which they are performed in other regulatory agencies. Achievement of objectives in the enforcement function could not be determined because of lack of data from the grievance committees.

The remaining functions, other than the normal support functions, are dissimilar to those performed by the other state regulatory agencies. Review of 13 major program or activity operating areas revealed a high degree of similarity to the programs and activities of professional associations or societies of other state-regulated populations. Evidence of diligence and innovative efforts to provide services to State Bar members was indicated by the number and variety of such membership services. However, no comparison with the performance of other professional associations or societies could be made because data were not available.

### Criterion 3

An assessment of less restrictive or other alternative methods of performing any regulation that the agency performs which could adequately protect the public.

The review under this criterion centered on analyses of the agency's regulatory functions in terms of 1) changes over time in the restrictive nature of agency functions, as seen in the agency's statutory history; 2) significant effects of this regulation on the public and the industry; and 3) alternative methods of performing the agency's regulatory tasks. These analyses were obtained through the agency's self-evaluation report, literature concerning occupational licensing, and surveys of similar licensing functions in other states.

The statutes pertaining to both the State Bar and the Board of Law Examiners are considered in this section, as both agencies are directly involved in the regulation of the legal profession. In addition, the statutory functions of the Texas Supreme Court which relate to the Board of Law Examiners or the State Bar are covered by this section, as are several other statutes which relate to the functions of the board or the Bar. Exhibit III-1 summarizes these statutory provisions as of 1939, the date of passage of the State Bar Act, and summarizes amendments since that time. Also included in this section of the report are reviews of the Legal Specialization Program and the Program for the Participation of Law Students and Unlicensed Law School Graduates in the Trial of Cases in Texas.

#### Statutory Changes

The statutory duties of the Board of Law Examiners have not been changed since its creation in 1919. The composition of the board was not changed from 1919 until 1977, when the membership was increased from five to nine. The



EXHIBIT III-I

Summary of Legislative Changes

State Bar of Texas  
Board of Law Examiners

Year	Licensing	Enforcement	Administration
1939	<ul style="list-style-type: none"> <li>- Board of Law Examiners, under instructions and rules of the Texas Supreme Court, passes on the eligibility of candidates to take the examination for license to practice law</li> <li>- Board of Law Examiners administers examination to qualified candidates</li> <li>- Supreme Court makes rules governing eligibility for the examination, insuring among other points: (Art. 306)               <ul style="list-style-type: none"> <li>- Good moral character</li> <li>- Adequate pre-legal study and attainment</li> <li>- Adequate study of law for at least two years</li> <li>- The legal topics to be covered by such study, and by the examination</li> <li>- The time and place of the examination, and the grade required for passage</li> </ul> </li> <li>- Fees               <ul style="list-style-type: none"> <li>- Fee for examination to be set by the Supreme Court, not to exceed \$20 for each candidate (Art. 310)</li> <li>- Per annum fee of not less than \$4 for members of the State Bar, to be set by the Supreme Court</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Supreme Court to prepare and propose rules and regulations for disciplining, suspending, and disbaring attorneys</li> <li>- Supreme Court to prepare and propose rules and regulations prescribing a code of ethics governing the professional conduct of attorneys               <ul style="list-style-type: none"> <li>- Such rules and regulations to be effective upon approval of a majority of State Bar members returning ballots, provided at least 51 percent of the membership returns ballots</li> </ul> </li> <li>- Limitation               <ul style="list-style-type: none"> <li>- Supreme Court not to adopt any rule abrogating the right to trial by jury in disbarment proceedings, in the county of residence of the defendant</li> </ul> </li> <li>- Disbarment proceedings to be instituted against any attorney only in the district court located in the county of the attorney's residence</li> <li>- No attorney to be suspended until convicted of the charge pending against him.</li> </ul>	<ul style="list-style-type: none"> <li>- Board of Law Examiners               <ul style="list-style-type: none"> <li>- Membership of five lawyers appointed by the Supreme Court for two-year terms</li> </ul> </li> <li>- State Bar               <ul style="list-style-type: none"> <li>- The general executive agency is the Board of Directors composed of the officers of the State Bar and one director elected from each of the bar districts (State Bar Rules)</li> </ul> </li> <li>- The Supreme Court to prepare and propose rules and regulations for the operation, maintenance and conduct of the State Bar               <ul style="list-style-type: none"> <li>- Such rules and regulations to be effective upon approval of a majority of State Bar members returning ballots, provided at least 51 percent of the membership returns ballots</li> </ul> </li> </ul>

Year	Licensing	Enforcement	Administration
	<ul style="list-style-type: none"> <li>- <b>Requirements</b></li> <li>- All persons licensed to practice law in the state are members of the State Bar and are subject to the provisions of the State Bar Act and rules adopted by the Supreme Court</li> <li>- All persons not members of the State Bar are prohibited from practicing law in the state</li> </ul>		
1949	<ul style="list-style-type: none"> <li>- <b>Fees</b></li> <li>- Added requirement that the Supreme Court, prior to prescribing any fee to be assessed on members of the State Bar in excess of \$4 per annum, submit the proposed fee assessment to an election by the members</li> </ul>		
1955	<ul style="list-style-type: none"> <li>- Completion of prescribed study in an approved law school (approved by the Supreme Court) satisfies law study requirements for taking examination (Art. 306)</li> </ul>	<ul style="list-style-type: none"> <li>- No license to practice law to be issued by any court or authority other than the Supreme Court (Art. 306)</li> </ul>	
1965			<ul style="list-style-type: none"> <li>- Statutory provision making the board directors the general executive agency of the State Bar</li> <li>- Board to be composed of the officer of the State Bar, and not more than 30 additional members elected from geographical bar districts</li> </ul>
1967	<ul style="list-style-type: none"> <li>- <b>Fees</b></li> <li>- Maximum fee for examination increased to \$40 (Art. 310)</li> </ul>		

Year	Licensing	Enforcement	Administration
1967		<ul style="list-style-type: none"> <li>- Suspension               <ul style="list-style-type: none"> <li>- Provided that on proof of conviction of an attorney of any felony involving moral turpitude or of any misdemeanor involving the theft, embezzlement, or fraudulent appropriation of money or other property, the district court of the county of residence of the convicted attorney shall enter an order suspending the attorney from the practice of law during the pendency of any appeal</li> <li>- Provided that an attorney given probation after such conviction shall be suspended from the practice of law during the period of his suspension</li> </ul> </li> <li>- Disbarment               <ul style="list-style-type: none"> <li>- Provided that upon final conviction of such charges where probation not given that the district court shall enter a judgment disbarring the attorney</li> </ul> </li> </ul>	
1971	<ul style="list-style-type: none"> <li>- Provided that bona fide law students who have completed at least two-thirds of the required curriculum may assist licensed attorneys in the trial of cases, participation to be governed by rules and regulations of the State Bar</li> </ul>		
1975	<ul style="list-style-type: none"> <li>- Included in the above exception to State Bar membership requirements graduates of approved law schools before the first offering of the bar examination after their graduation, and graduates of approved law schools who have taken the bar examination for the first time and have not yet received the results. Also included were students who have completed one-half of the required curriculum and are enrolled in a clinical legal education course</li> </ul>		

Year	Licensing	Enforcement	Administration
1977:	<ul style="list-style-type: none"> <li>- Fees               <ul style="list-style-type: none"> <li>- Maximum fee for examination increased to \$75 (Art. 310)</li> </ul> </li> <li>- Prepaid Legal Services               <ul style="list-style-type: none"> <li>- No member of the Bar may provide legal services pursuant to any prepaid legal services program, unless the sponsoring organization first applies to and receives approval of the arrangement from the Board of Directors of the State Bar (Art. 320b)</li> </ul> </li> <li>- The Board of Directors must approve applications of organizations meeting requirements set out in the Prepaid Legal Services Act</li> </ul>		<ul style="list-style-type: none"> <li>- Board of Law Examiners               <ul style="list-style-type: none"> <li>- Membership expanded from five to nine lawyers</li> </ul> </li> </ul>

maximum allowable fee for the examination has been increased twice, from \$20 to \$40 in 1967, and from \$40 to \$75 in 1977, by amendment of Article 310.

The State Bar Act has been amended only four times since 1939, and then in relatively minor aspects. The 1965 amendment placed in the statute the provisions making the Board of Directors the general executive agency of the State Bar and providing for composition of the board. Prior to the amendments, similar provisions had appeared in the State Bar Rules adopted in 1940.

In 1969, the Act was amended to provide for suspension or disbarment upon conviction for felonies involving moral turpitude and certain misdemeanors. (Disbarment was required after available appeals were taken unless the attorney was given probation.)

The 1971 amendment permitted a student who had completed at least two-thirds of his law studies to assist a licensed attorney in the trial of cases. The student's participation was to be governed by rules and regulations promulgated by the State Bar. This exception to the licensing requirement was expanded in 1975 and to include law graduates who had not yet taken the bar exam or who had taken the exam and not yet received the results. Also included in the exception were law students who had completed at least half of their law studies and were enrolled in a clinical legal education course.

Amendments to related statutes include the 1955 amendment to Article 306 which provided that completion of the prescribed course of study in an approved law school satisfied the law study requirements for taking the examination, and that no license to practice law could be issued by any court or authority other than the Supreme Court.

In 1977, Article 320b, the Prepaid Legal Services Act, was passed. This Act required the approval of prepaid legal services programs by the Board of Directors

of the State Bar before any member of the Bar could participate in such program. Under the Act, the Board of Directors is required to approve programs meeting the criteria set out in the Act.

In summary, the restrictive nature of regulatory functions of the State Bar have not changed significantly since the adoption of the State Bar Act in 1939. However, the true impact of the regulatory functions of the State Bar are more clearly apparent from the State Bar Rules, which are discussed in a subsequent part of this section, rather than from the statute. Neither the function of the Board of Law Examiners nor the Supreme Court in this area changed significantly over time.

#### Admission to the Bar

Entry into the occupation of law is regulated by the "Rules Governing Admission to the Bar in Texas" which are promulgated by the Supreme Court and jointly administered by the State Board of Law Examiners and the State Bar. The State Bar Act requires that all lawyers wishing to practice law in Texas must be members of the State Bar (Art. 320a-1, V.A.C.S.). In 16 states, bar dues are less than the \$65 annual fee charged by the State Bar of Texas. A survey of 50 state bars indicates that 30 states possess integrated bars which restrict the practice of law to bar members. These states are:

Alabama	Mississippi	Rhode Island
Alaska	Missouri	South Carolina
Arizona	Montana	South Dakota
California	Nebraska	Texas
Florida	Nevada	Utah
Georgia	New Hampshire	Virginia
Idaho	New Mexico	Washington
Kentucky	North Carolina	West Virginia
Maryland	North Dakota	Wisconsin
Michigan	Oregon	Wyoming

In states which do not require bar membership in order to practice law, the bar often acts as a voluntary association, although the bar may be regulated by

statute or the judiciary. In Texas, the responsibility of certifying candidates for admission to the Bar rests with the Board of Law Examiners. However, the Standards of Admission Department within the State Bar, established pursuant to the revised "Rules of the Supreme Court Governing Bar Admission, Definitions and General Provisions" adopted on February 26, 1974, is responsible for assisting the Board of Law Examiners in certifying the good moral character and emotional fitness of applicants for admission to the Bar. The department conducts two preliminary investigations of the good moral character and emotional fitness of each applicant, one at the time that the required Declaration of Intention to study law is filed and the second when an application for admission to the Bar is filed. The department is assisted in its investigations by 17 district committees on admissions established pursuant to rules of the Supreme Court. District committees have the responsibility of certifying the good moral character and emotional fitness of all declarants and applicants who reside in the district prior to the individual's taking of the Bar examination. No standard statewide procedure for the investigation of declarants and applicants has been recommended by the Standards of Admission Department. Consequently, applicants from different districts may be subject to substantially different and potentially discriminatory investigative procedures. Standards of Admission Department staff indicate that some districts require a personal interview with each applicant while other districts seldom interview applicants.

The registration of law students who intend to apply for admission to their State Bar is required by 11 states as well as Texas. The most recent list of registration fees (1975) located during the staff review indicates that no state charges a higher declaration/registration fee than the \$75 fee charged by the Texas

Board of Law Examiners. This \$75 fee is used by the board to pay for the investigation of the declarant conducted by the Standards of Admission Department of the State Bar. No other states were found to use District Committees on Admissions to certify the good moral character and emotional fitness of student registrants or Bar applicants.

#### Restrictions on the Practice of Law

The practice of law in Texas is regulated by the Code of Professional Responsibility promulgated by the Supreme Court as Section 8, Article XII, Rules Governing the State Bar of Texas, (V.A.C.S.). Texas is the only state in which a referendum of Bar members is required in order to promulgate or amend a rule regulating the practice of law. The Code of Professional Responsibility is composed of ethical considerations and disciplinary rules which guide a lawyer in his practice. A lawyer is guilty of misconduct and subject to discipline by the State Bar if he 1) violates or circumvents a disciplinary rules, 2) engages in illegal conduct involving moral turpitude, dishonesty, fraud, deceit or misrepresentation, 3) engages in conduct that is prejudicial to the administration of justice, or 4) engages in any other conduct that adversely reflects on his fitness to practice law.

While the Disciplinary Rules of the State Bar are similar to those of many states and to the model disciplinary rules established by the American Bar Association, certain disciplinary rules may restrict the practice of law in a manner inconsistent with the public welfare.

#### Advertising

Disciplinary Rule 2-102 (B) states that "A lawyer shall not publicize himself, his partner, or associate as a lawyer through newspaper or magazine advertisements, radio or television announcements, display advertisements in city or



telephone directories, or other means of commercial publicity ..." Lawyers may allow the publicity of their names by certain non-profit organizations including lawyer referral services and public defenders offices. Disciplinary Rules 2-102 specifically describes the professional card, announcement card, office sign and letterhead which may be used by a lawyer as well as the information that a lawyer may publish in a telephone directory or legal directory.

The United States Supreme Court in Bates and O'Steen v. State Bar of Arizona, 433 U.S. 350 (1977) held that limited lawyer advertising has First Amendment protection. Presently the State Bar of Texas is seeking to amend its disciplinary rules to allow lawyers to advertise certain limited information in newspapers. The rules of the State Bar state that competitive advertising could mislead lay persons and produce unrealistic expectations on the part of the public. In our free market economy, however, commercial information has traditionally been disseminated in the absence of compelling reasons to the contrary. Where restrictions are appropriate, they should be imposed in a manner which does not unnecessarily restrict competition or interfere with the public's right to communicate and receive information. The "laundry list" approach of both disciplinary Rule 2-101 and the proposed amendment allows for the publication of some specific information, but restricts the flow of market information which the Bar does not consider to be appropriate or useful. Furthermore, no justification is offered in the Code of Professional Conduct for the bar on electronic media advertising by lawyers. The prohibition of electronic media advertising may deprive a significant number of lay persons of relevant information communicated in the media to which they are most frequently exposed. It is difficult to perceive why information contained in a printed advertisement becomes improper when presented on radio or

television. Presently, 12 states allow lawyers to advertise on the radio while 10 states allow television advertisements. Rules allowing electronic media advertising are under consideration in nine additional states. No apparent harm to the public has occurred in those states which allow electronic media advertising by lawyers.

Information regarding what lawyers charge is clearly important for private economic decisions by those in need of legal services. The bar on advertising serves to increase the difficulty of discovering the lowest cost seller of legal services. Consequently, unlimited factual advertising could possibly reduce the cost of legal services to the consumer. Where certain forms of advertising cause documented public harm which outweighs public benefit, the least restrictive method of regulation would be to prohibit these specific forms of advertising rather than prohibiting advertising as a whole.

#### Due Process

Questions regarding the application or interpretation of disciplinary rules are resolved by Bar Grievance Committee Opinions. Such opinions, although not having the status of law, direct the disciplinary actions of the State Bar. Despite the interpretation of the Code of Professional Responsibility provided by opinions of the Bar Ethics Committee, some disciplinary rules possess phrases so vague and indefinite that any penalty prescribed for their violation may constitute a denial of due process of law. Disciplinary Rule 1-102 (A) (V.A.C.S.) states that "A lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law" and that "a lawyer shall not engage in conduct that is prejudicial to the administration of justice." The United States Supreme Court has held, under the void for vagueness doctrine, that "a statute which either forbids or requires the doing of an Act in terms so vague that men of common intelligence must

necessarily guess at its meaning and differ to its application violates the first essential of due process . . ." Connally V. General Constr. Co., 269 U.S. 385, 391 (1926) . Disciplinary Rule 1-102 would appear to be so vaguely phrased as to allow for discriminatory application and the potential deprivation of the due process rights of lawyers.

#### Rules Affecting Agency Operation

The State Bar Act (Article 320a-1, V.A.C.S.) states that the Supreme Court shall prepare and propose rules and regulations for disciplining, suspending and disbarring attorneys at law and for the operation, maintenance and conduct of the Bar. The State Bar Act provides for the establishment in each bar district of one or more Grievance Committees composed of Bar members appointed by the president of the State Bar and residing in the district. In Texas, all grievance committee members must be lawyers, however approximately 20 states require lay members on disciplinary committees. The local grievance committees are investigative bodies which collect and assemble facts and information and hold hearings. Grievance committees may not discipline a lawyer without his agreement. In order to revoke or suspend a lawyer's license against his will, a formal complaint must be filed against the lawyer in the district court of the county of his residence. Local grievance committees may vote to formally reprimand a lawyer, in which case the lawyer has ten days to file a lawsuit in the district court seeking to set aside the reprimand. Texas is presently the only state in which all formal disciplinary proceedings are tried by jury. North Carolina and Georgia permit jury trials at the accused attorney's request. In all other states, an attorney is disciplined by his peers. The American Bar Association has recommended the elimination of jury trials in disciplinary proceedings.

The local grievance committee system of lawyer discipline used in Texas is unique among the states. No other state relies so extensively on volunteer participation. Although volunteer participation may result in some cost savings to the Bar, information gathered from other states indicates that grievance activities may be supported, in the absence of volunteers, by the collection of a nominal fee from Bar members. The 11 states which chose to fund grievance procedures in this manner charge an average annual fee of \$25 to Bar members. Staff surveys indicate that 22 states discipline lawyers through central committees under the jurisdiction of the Supreme Court while 22 states utilize central committees of the Bar. The disciplining of lawyers by volunteer local committees is subject to numerous criticisms. American Bar Association officials state that grievance procedures have been centralized in all states but Texas and Connecticut in order to remove local bias, politics and cronyism from the disciplinary process. Although the general counsel has issued a Manual for Grievance Committees, no local investigation standards or criteria were identified in the review. The absence of standard investigation procedures may produce a substantial lack of uniformity in the discipline imposed upon lawyers. Reliance on local volunteers may result in an inability to conduct intensive investigations, inadequate record-keeping and increased delays in the disposition of complaints.

#### Unauthorized Practice of Law

Article IX of the State Bar Act established the Unauthorized Practice Committee of the State Bar which has concurrent jurisdiction with grievance committees in instituting unauthorized practice suits and proceedings. It is the duty of each grievance committee to hear and investigate complaints of unauthorized practice of law made by laymen and attorneys. In addition, the Board

of Directors of the State Bar may employ individuals to investigate the unauthorized practice of law on the part of any citizen. At present, the practice of law is not defined in Texas statutes. Consequently, many laymen may be unaware of what acts constitute the unauthorized practice of law. Thirteen states define the practice of law either generally or by listing the activities in which a lawyer is authorized to engage. Twenty states define the unauthorized practice of law.

Upon receipt of a complaint regarding unauthorized practice which appears to be valid, the general counsel of the Bar may write a "cease and desist" letter to the unlicensed practitioner. The general counsel's office does not itself investigate unauthorized practice. No uniform procedures for regulating unauthorized practice were identified. Approximately four active local unauthorized practice committees exist. In other districts, unauthorized practice complaints are either handled by grievance committees or referred directly to the Bar.

Many states have statutes which provide for the limited practice of law by laymen and lay agencies. Twenty-three states allow laymen to practice law before unemployment compensation boards and eight states allow lay practice before workmen's compensation boards. The limited practice of law by laymen before unemployment compensation boards and workmen's compensation boards in Texas is prohibited. The preparation of legal instruments by laymen is allowed in six states but prohibited in Texas.

### Summary

The rules and statutes governing the State Bar of Texas provide for the local performance by volunteers of several basic regulatory functions. No standard procedure for the investigation of complaints by volunteer local grievance committees was identified in the agency review, and State Bar staff have indicated

that grievances are often resolved through "jaw boning" rather than through formal action. In addition, no standard procedures were identified for the regulation of the unauthorized practice of law or for the investigation of the good moral character and emotional fitness of Bar applicants. The absence of standard procedures for the performance of these basic regulatory functions allows for the selective application of Bar rules and standards at the local level. Virtually all states, with the exception of Texas, have established centralized grievance and investigative committees in order to limit the influence of local bias and cronyism on regulatory functions. Texas is the only state in which formal grievances must be tried by jury in the absence of a lawyer's agreement to the sanctions suggested by the Bar. In all other states a lawyer is disciplined by his peers.

Limitations placed on the advertising of lawyers by State Bar Rules appear to be overly restrictive in light of the experiences of other states. Many states allow electronic media advertising by lawyers with no apparent harm to the public. It is unclear how the advertising of any factual information by a lawyer might endanger the public welfare. Laws prohibiting fraud and misleading advertising would appear sufficient to protect the public.

The State Bar of Texas is in many ways unique among bars in the United States. While State Bar Rules which provide for the local control of the practice of law may be laudable, the discretionary powers granted local volunteer committees appear to allow for the selective application of State Bar Rules.

Program for the Participation of Law Students and Unlicensed Law School Graduates in Texas

The State Bar Act as amended by House Bill 424 of the Sixty-fourth Legislature (Acts 1975, Sixty-fourth Legislature, Chapter 56, p. 120.) provides for

the participation of qualified law students and qualified unlicensed law school graduates in the trial of cases in Texas.

The rules and regulations governing the participation of qualified law students and qualified unlicensed law school graduates in the trial of cases in Texas state that, subject to the approval of the presiding judge or presiding administrative officer, a qualified law student or a qualified unlicensed law school graduate may appear in any court or before any administrative tribunal on behalf of the State of Texas or any other consenting party. The qualified law student or unlicensed law school graduate must be accompanied by a supervising lawyer who is licensed to practice law in Texas at his appearance in the following matters:

- a) Appearances for the purposes of trial of civil or criminal matters;
- b) The arguing of motions;
- c) The taking of depositions;
- d) The conduct of any hearing or trial before any administrative tribunal or in any court.

The participating law student or unlicensed law school graduate need not be accompanied by the supervising attorney in any other matters assigned to him; however, the supervising attorney must sign all pleadings filed by the participating student or unlicensed law school graduate.

#### Requirements for Participation

The requirements for participation in the trial of cases by law students and unlicensed law school graduates are identified in Exhibit III-2. The yearly number of participants in the program are listed below, approximately 750 supervising attorneys participated in the program during this three-year period.

EXHIBIT III-2

Requirements for Participation in the Trial of Cases  
By Law Students and Unlicensed Law School Graduates

Law Students

- Participating law students must be enrolled in a law school approved by the Supreme Court of Texas;
- Be certified by their dean as having completed not less than 2/3 of the required curriculum for graduation; or
- Not less than 1/2 of the required curriculum for graduation if the student is enrolled in a clinical legal education program;
- Not be on scholastic probation;
- Be certified by the dean that the student appears to possess the qualifications necessary to take the State Bar examination;
- Agree to abide by the Texas Code of Professional Responsibility and subject themselves to the grievance procedures of the State Bar of Texas.

Unlicensed Law School Graduates

- Participating unlicensed law school graduates must:
- Be certified by the dean of an approved law school as a graduate and file a transcript with the general counsel;
- Be certified by the dean of their law school that they appear to possess the qualifications necessary to take the State Bar examination;
- Agree to abide by the Texas Code of Professional Responsibility and subject themselves to the grievance procedures of the State Bar of Texas.

Supervising Lawyers

- Supervising lawyers must:
- Be licensed by the Supreme Court for three years;
- Be professionally responsible for the supervision of the law student's or unlicensed law school graduate's work;
- Supervise not more than four persons;
- Maintain malpractice and errors and omissions insurance;
- Demonstrate that they are skilled in the trial of cases by the certification of local bar officials or by personal affidavit;
- Be approved by the dean of the law school if the supervisor is participating in a clinical program.



of lawyers certified by either local bar officials or the dean of a Texas school of law as qualified to supervise law students and unlicensed law school graduates. The general counsel is required by rule to "immediately revoke the registration of any supervising lawyer against whom any disciplinary action is pending before any grievance committee or court." Although the registration of a supervising lawyer has never been revoked by the general counsel because of a pending grievance, such a revocation could, by reducing the size of the lawyer's staff, have a serious impact on the supervising lawyer's practice and jeopardize his ability to provide appropriate services to his clients. Requirements that the supervising attorney be certified as ethically and morally qualified to supervise students and unlicensed law school graduates would appear sufficient to ensure that supervisees are not exposed to unethical or immoral practices.

#### Restrictions on the Practice of Participants

Law students and unlicensed law school graduates who participate in the trial of cases may not charge a client for legal services or receive a percentage fee, contingency fee or origination fee. Program rules do not prevent the law student or unlicensed law school graduate from being paid for his services by his supervising attorney. A supervising attorney may charge a fee for services rendered by the law student or unlicensed law school graduate under his supervision.

Qualified law students may participate in the trial of cases only while enrolled in law school and may continue supervised practice during the period between graduation and the date that notification is made by the Board of Law Examiners of the results of the first bar exam following the students' graduation. Program participants must agree to abide by the Texas Code of Professional Responsibility and agree to subject themselves to the grievance procedures of the State Bar.

Third-Year Law Students and Unlicensed Law School

Graduates Participating in the Trial of Cases

1975 - 1976	582
1976 - 1977	563
1977 - 1978	647

Program Rules and Administration

The program allowing for the participation of qualified unlicensed law school graduates and qualified law students is jointly administered by the law schools of Texas and the State Bar. No money is budgeted by the State Bar for the administration of the program. The dean of each approved law school is required to maintain a record of the certification of participating law students and unlicensed law school graduates and must file their names with the general counsel of the State Bar. Deans are required to terminate certification when program requirements are no longer met by the student or unlicensed graduate. Rules governing the program state that a law school dean "may terminate certification at any time without prior notice or hearing and without any showing of cause." The dean must notify the law student or unlicensed law school graduate, the supervising lawyer, and the general counsel of the State Bar in writing of any such termination of certification. The rules of the program provide no avenue of appeal for individuals whose certification is terminated by their dean; however no participants have had their certification terminated in such a manner.

The office of the general counsel of the State Bar maintains a file of applications which have been certified by the dean of the applicant's law school. Identification cards are issued to all applicants who submit a completed application. The general counsel also maintains a file of all completed applications

### Summary

The program for the participation of qualified law students and qualified unlicensed law school graduates appears to allow for the practical training of law students and unlicensed law school graduates while placing only limited restrictions on the participants. Several potentially restrictive requirements, however, have been identified during the program review. The requirement that supervising attorneys be certified by local bar officials may limit the participation of competent lawyers who are disfavored by local officials. Other programs of the State Bar allow participants to submit the names of references of their choice. The program rules state that a participant's certification may be terminated at any time without a hearing and without a showing of cause by the dean of the participant's law school. Although no participants have been removed from the program by a dean's action, the authority of a dean to terminate a certification could, in the absence of an avenue of appeal for the participant or the requirement that the dean show cause for his action, constitute a restriction to participation in the program.

### Legal Specialization

The Board of Directors of the State Bar of Texas approved on June 30, 1971 a "plan for recognition and regulation of specialization in the law," developed by the State Bar's Special Committee on Advisability of Specialization Recognition. Upon completion of its study of legal specialization, the committee concluded that "the State Bar of Texas should proceed to regulate specialization, rather than allow its development without adequate protection to the public" and that "the certification of specialists in certain defined fields would be beneficial to both the public and the Bar." Members of the Texas Board of Legal Specialization were appointed by

the president of the State Bar in July 1972. The Texas Plan for Recognition and Regulation of Specialization in the Law was ordered effective by the Supreme Court on July 16, 1974. The plan authorized a pilot program of voluntary certification in the areas of family law, criminal law and labor law. In 1977 the fields of estate planning and probate, personal injury trial law and civil trial law were included in the voluntary certification program. The program administrator has indicated that additional fields of specializations may be included in the plan in future years. At the January 1977 meeting of the board, the pilot Legal Specialization Program, which was to be discontinued on December 31, 1977, was extended through December 31, 1980.

At present, California and Texas are the only states which regulate specialization of lawyers through a certification program that attempts to ensure the competency of specialists. Florida and New Mexico operate specialty designation programs which allow lawyers who meet specific criteria to identify themselves as specialists. The designation programs of Florida and New Mexico do not, however, attempt to ensure the competency of the specialists.

#### Certification Requirements

Requirements for certification in the six designated areas of legal specialization are promulgated by the Board of Legal Specialization with the approval of the Board of Directors of the State Bar. Advisory groups of attorneys assist in the development of certification standards and the administration of the program in each area of specialization. All applicants must submit a non-refundable filing fee of \$100 and, upon approval of their application, an examination fee of \$150. All certified specialists must pay an annual fee of \$50. Although the filing fee is non-refundable, board minutes indicate that some individuals have been allowed to file

conditional applications without paying the filing fee in the absence of board precedent which would indicate to the applicant his potential eligibility for certification.

At present, 616 specialists are certified by the Board of Legal Specialization. As indicated below, the number of lawyers seeking certification has decreased rapidly during the three-year period in the original pilot areas of criminal, family and labor law.

	<u>1975</u>	<u>1976</u>	<u>1977</u>
Applications Received (Criminal, Family and Labor Law)	487	179	78
Specialists Certified (Criminal, Family and and Labor Law)	323	112	44

In order to be certified as a specialist, an applicant must be an active member in good standing of the State Bar of Texas and currently maintain an office in Texas. An applicant is required to furnish satisfactory evidence of good character and reputation and a statement indicating whether or not the applicant has ever been subject to an investigation, complaint, inquiry or other disciplinary proceeding by any segment of the Bar and the details and outcome of any disciplinary proceeding. The Board of Legal Specialization may deny certification based on the finding of a grievance committee or court that the applicant has been guilty of professional misconduct.

An applicant is also required to furnish a statement as to whether or not he has ever been convicted, given probation or fined for a serious crime regardless of any pending appeal. The term "serious crime" includes any felony and any lesser crime including improper conduct of any attorney, interference with the administration of

justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, an attempt or conspiracy or solicitation of another to commit a serious crime, or willful failure to file an income tax return. The board may deny certification if the applicant has been convicted, given probation or fined for a serious crime.

The reputation of an applicant is evaluated, in part, on the basis of references provided by the attorney to the Board of Legal Specialization. Each applicant, with the exception of those applying for certification as estate planning and probate law specialists, must submit the names and addresses of five lawyers who will attest to the applicant's competence in the desired area of specialization. An applicant for certification in the area of estate planning and probate law must submit the names and addresses of four attorneys and one county or probate judge who will serve as references. Partners or associates of the applicant may not serve as references. In addition to the five names of references supplied by the applicant, the board may at its option send statement of reference forms to other attorneys and judges. The board may deny certification on the basis of information received from statements of reference.

An applicant for board certification as a specialist must have engaged in the practice of law for at least a five-year period and must demonstrate "substantial involvement and special competence" in his desired area of specialization before being certified. Specific requirements for the demonstration of substantial involvement and special competence exist for each area of specialization (Exhibit III-3). An applicant must also demonstrate to the board satisfactory educational experience within the three years immediately preceding application by attendance at and completion of board approved programs of study in the desired area of

EXHIBIT III-3

Substantial Involvement and Special Competence Requirements for Certification

Estate Planning and Probate Law

A minimum of 25 percent of lawyer's time spent practicing in specialty area for three years preceding application.

Involvement to the satisfaction of the board in:

1. Counseling in estate planning;
2. Preparation or supervision of the preparation of estate planning instruments;
3. Handled or advised with respect to the probate and/or administration of a decedent's estate;
4. Prepared, reviewed, or supervised the preparation of Federal Estate Tax Returns, Texas Inheritance Tax Returns, and U.S. Fiduciary Income Tax Returns including representation in connection with such tax returns.

Family Law

A minimum of 25 percent of lawyer's time spent practicing in specialty area for two years preceding application or has served as a judge adjudicating family matters for all or a proportionate part of preceding two years, or service.

Applicant must show substantial involvement for three years immediately preceding the application.

Applicant must provide information requested by the board in the areas of civil jury trial, contested jury or non jury hearings, civil appeals, and contested family law matters disposed of prior to trial or final hearing.

Civil Trial Law

A minimum of 25 percent of lawyer's time spent practicing in specialty area for three years preceding application or has served as a judge adjudicating civil trial matters for all or a proportionate part of three years or has served as a teacher of civil trial subjects for all or a proportionate part of the three year period preceding application.

The applicant shall have tried during his practice a minimum of 15 contested civil cases involving a sum in controversy in excess of \$10,000. Of this number of cases tried, at least seven shall have been jury cases; at least seven shall have been conducted by applicant as lead counsel; and several shall have involved trials where the case was submitted to the trier of fact.

OR

The applicant shall have devoted a minimum of 100 separate days to the trial of contested civil cases involving a sum in controversy in excess of \$10,000. Of the number of days of trial: (i) at least one-half of those days shall have been devoted to the trial of jury cases; (ii) at least 30 of those days of trial shall have involved trials conducted by applicant as lead counsel; and (iii) several of those days shall have involved trials where the case was submitted to the trier of fact.

The board may permit an applicant to substitute criminal district court trials and contested administrative agency hearings in which the testimony is recorded and formal rules of evidence and procedure are applicable, for some of the trial or trial days requirements.

Labor Law

A substantial involvement in a broad labor law practice for three years preceding application. A minimum of 25 percent of lawyer's time spent practicing in specialty area for two years preceding application.

Must have engaged directly and substantially in at least three of the board defined areas of labor law one of which must be practice including the National Labor Relations Act and has engaged in practice in the federal or state courts in defined areas of labor law.

Criminal Law

A minimum of 25 percent of lawyer's time spent practicing in specialty area for the two years preceding application or service as a judge of criminal law matters for all or a proportionate part of the two years preceding application.

Applicant must show his substantial involvement and special competence in criminal law practice within the three years immediately preceding application by providing such information as may be required by the board regarding criminal law cases participated in by applicant in each category designated by the board.

Personal Injury Trial Law

A minimum of 25 percent of lawyer's time spent practicing in specialty area for the three years preceding application or service as a judge adjudicating personal injury matters during all or a proportionate part of the three years preceding application.

The applicant must have tried during his entire practice, as lead counsel, at least ten contested civil cases which were submitted to the trier of fact in a court of record. Five of the required ten cases must have been personal injury trials.

The applicant shall provide such information as required by the board to determine the nature of his practice.



specialization or by substantial involvement in continuing legal education in the area of specialization. All applicants are required to pass a written examination developed by the board. In addition, oral examinations may be required of applicants prior to certification. Approximately eight applicants were required to take oral examinations in 1975. Program staff state that, because of the expense of administering the exam, no further oral examinations have been required. A summary of the causes for denial of certification is presented in Exhibit III-4. In a review with program staff, no rationale could be identified for several certification requirements including the requirements that a lawyer have engaged in five years of practice and devoted 25 percent of his time to practice in the specialty area.

EXHIBIT III-4

Causes for the Denial of Certification  
(1975-1977)

Failed Examination	156	48%
Insufficient substantial involvement and special competence in the area of specialization	93	28%
Poor or insufficient references	29	9%
Insufficient educational experience	28	9%
Lack of full-time practice for the preceding five years	7	2%
Past professional misconduct	6	2%
Misrepresentation of a material fact to the board	<u>5</u>	<u>2%</u>
	324	100%

\*Certification may be denied for more than one cause.

SOURCE: Board minutes.

Board certified specialists are recertified for a period of five years. Requirements for recertification have been established for four of the six areas of specialization. Applicants for recertification must furnish evidence of their continuing good character and reputation as well as a statement indicating whether the applicant has been, or is presently, subject to any disciplinary proceedings by any segment of the Bar. Recertification may be denied upon the finding of a court or grievance committee that the applicant has been guilty of professional misconduct or if the applicant has been convicted, given probation or fined for a serious crime during the five-year period preceding his application. In order to be recertified applicants must be engaged on a full-time basis in the practice of law and must show "continuing substantial involvement and special competence" by furnishing such information as may be required by the board. In addition, applicants for recertification must demonstrate satisfactory and substantial involvement in continuing legal education during the five year period of certification. Applicants in the area of Family Law must attend or participate in 75 hours of continuing legal education. All other areas of specialization require that applicants attend or participate in 50 hours of continuing legal education. In each area of specialization, other educational experiences may be used to supplement or satisfy the continuing legal education requirement at the board's discretion.

#### Restrictions on the Practice of Board Certified Specialists

The legal practice of board certified specialists is regulated by the rules of the State Bar. A lawyer who holds a current certificate of special competence, however, is permitted to state in legal directories or law lists; in notices mailed to lawyers, clients, former clients, personal friends and relatives; in the classified section of telephone directories; and on his/her professional card that he/she is a

board certified specialist. Therefore, certification as a specialist lessens the restrictions on advertising established by the rules of the State Bar.

Certificate holders are required to pay "any fee established by the board." An annual fee of \$50 is presently collected from each specialist. Prior to recertification, each specialist must attend a minimum of 50 hours of continuing legal education courses approved by the board.

#### Rules Affecting Board Procedures

The Board has the responsibilities of developing examinations in the areas of specialization, establishing requirements for certification and approving continuing legal education courses. One-third of each examination is rewritten each year by law professors employed by the board. A fee of \$30 per exam to be divided by the graders is paid by the board. A \$500 honorarium is paid to professors who write the exam. The board establishes the minimum passing raw score for each examination on the basis of the distribution of examinee's grades. No written policies for determining the passing grade are maintained by the board. Board minutes indicate that the 3 applicants in the area of labor law during 1977 were determined by graders to have passed the exam although no passing score was established by the board.

An examinee who is dissatisfied with his score may petition the board to have his exam regraded. Minutes of the board indicate that nine applicants who took examinations in 1976 requested that their exams be regraded. Staff members indicate that the variation in regraded scores resulted from grading errors and that the scores were regraded a second time (Exhibit III-5).

EXHIBIT III-5

Original and Regraded Scores of Examinees (1976)

	<u>Original Exam Score</u>	<u>Regraded Exam Score</u>	<u>% and Direction of Variation</u>
<u>Family Law</u>	247.0	211	-14.5
	288.5	205	-28.9
	247.0	242	- 2.0
<u>Labor Law</u>	124.0	87	-29.8
	134.0	76.5	-42.9
<u>Criminal Law</u>	258.5	266	+ 2.9
	264.0	235	-11.0
	237.5	277	+16.6
	302.0	254	-15.89

Board rules allowed for the "grandfathering" of applicants for certification in the area of Labor Law during 1975 and 1976. Consequently, 85 of the 115 board certified specialists in Labor Law (74 percent) have not taken an examination. Presently, no specialist may be certified through grandfather provisions.

Summary

The American Bar Association has identified the goals of specialization as: a) improving the quality of legal services; b) increasing access of the public to legal assistance; and c) decreasing the unit cost of legal services to the consumer. California and Texas have implemented certification programs which attempt to insure the competence of board recognized specialists. Although both the California and Texas certification programs are pilot programs, neither has been evaluated. Consequently, program staff were unable to empirically identify the extent to which specialization programs have met their stated goals.

Requirements for certification are phrased in general terms in the Texas Plan for Recognition and Regulation of Specialization in the Law, thereby allowing the

board to exercise its discretion regarding some certification criteria. Entry requirements prevent young lawyers with less than five years of practice from being certified as specialists and may inhibit the certification of lawyers from rural areas who, because of the legal activity in their community, may not be able to devote 25 percent of their practice to a specialty. In addition, the variations between original exam scores and regraded scores of the nine applicants who requested a regrading of their exams in 1976 raises questions concerning the reliability of present grading methods. The decrease over the last two years in the number of lawyers applying for certification in the pilot areas of criminal, family and labor law would appear to indicate that certification as a specialist is either not desired by most lawyers practicing in these areas or that the requirements for certification are so rigorous as to significantly restrict applications.

Approximately 2.5 percent of Texas lawyers are certified as specialists by the State Bar. Although no data is available which would indicate that specialization increases the cost of legal services to the public, the recognition of specialists in other professions, particularly medicine, has contributed to the increased costs of professional services. Potentially less restrictive alternatives to the Texas pilot programs in legal specialization include allowing lawyers to publicize information about their fields of practice without requiring them to meet minimum standards of education, experience and reputation and the adoption of a designation plan, as in Florida, which permits lawyers to designate and publicize their fields of practice only if they conform to approved lists of fields and only if they possess substantial experience in the field. These alternatives do not attempt to ensure the competence of the specialist. The Texas Board of Legal Specialization is currently considering proposals for implementing a "two-tiered" specialization program

allowing for both the designation of areas of specialization by lawyers and certification of those specialists who choose to meet the board's requirements.

The staff of the pilot specialization program perceive the program and its various rules and standards as experimental and subject to change. At present, efforts are being made to establish a suitable format for the program's self-evaluation.

#### Criterion 4

The extent to which the jurisdiction of the agency and the programs administered by the agency overlap or duplicate those of other agencies and the extent to which the programs administered by the agency can be consolidated with the programs of other state agencies.

The review of this criterion was directed at evaluating the agency's definition of its target population. The existence of other similar populations was explored and the extent of any overlap and duplication of services offered was analyzed. When applicable, the review also dealt with any efforts to establish coordinative relationships between agencies serving similar target groups and to minimize any duplication of services. This information was collected through discussions with agency personnel, review of statutes and rules, and the identification of other agencies with a potential ability to offer these same services.

#### Regulatory Jurisdiction

The State Bar was created by action of the 46th Texas Legislature (1939) in passing a State Bar Act now codified as Article 320a-1, V.A.C.S. The Act provided for: 1) the creation of a Board of Directors; 2) apportionment of the state into Bar Districts; 3) mandatory membership in the State Bar of those who are licensed to practice law in Texas; 4) Supreme Court preparation of rules and regulations for disciplining, suspending, and disbaring attorneys at law; 5) operation, maintenance and conduct of the State Bar; 6) prescribing a code of ethics governing the professional conduct of attorneys at law; and 7) the prescribing of annual license or registration fees of \$4 per member. The Act further provided that the rules proposed by the Supreme Court and any increase in the statutory fee (\$4) must be

State Bar of Texas  
Comparative Regulatory Functions

Barber Examiners	Cosmetologists	Motor Vehicle Commission	Nursing Home Administrators	Public Accountancy	State Bar of Texas	
						1) processes notices only - money is paid to clerk of the Supreme Court
						2) shared with District Grievance Committees
						3) shared with District Grievance Committees
X	X	X	X			establish qualification standards independently
			X			qualification standards suggested by national organization
X	X		X			develop written examinations
			X	X		utilize national exams
X	X		X	X		process exam applications
X	X		X	X		evaluate qualifications for examination
X	X		X			prepare and send candidate ID cards
X	X		X	X		collect and process exam fees
						administer exams annually
				X		administer exams semi-annually
X	X		X			administer exams on multiple occasions
X	X		X			administer multiple exams
			X	X		national exam grading procedure
X	X		X			agency exam grading procedure
X	X		X	X		record and report grades
X	X		X	X		prepare and distribute certificates of registration
X	X	X	X	X	(1) X	process annual license renewal
X	X	X	X	X		collect renewal fees
		X		X		mail notification of delinquency
X	X		X	X		reciprocal registration processed independently
						reciprocal registration processed thru national org.
X	X		X	X		collect reciprocal registration fees
X	X	X	X	X	(2) X	receive and investigate complaints
X	X				(3) X	field investigation capability
X	X	X	X	X		issue warnings
X	X	X	X	X		consult legal counsel reference violations
X	X	X		X		invoke injunctive powers
X	X	X	X	X	X	arrange agendas for Board meetings
X	X		X	X	X	administer Board meetings
			X	X		prepare roster
			X	X		distribute roster
	X		X	X		coordinate activities with educational institutions



submitted to members for an approving vote. At least 51 percent of the registered members of the State Bar must vote in any election in order for the election to be valid.

State Bar Rules, promulgated by the Supreme Court under statutory authority of Article 320a-1, V.A.C.S., Title 14 Appendix, Article III, Section 1 states the purposes of the State Bar as follows:

1. The advancement of the administration of justice and the science of jurisprudence.
2. The encouragement of cordial intercourse among its members.
3. The improvement of relations between the Bench and the Bar and the public.
4. The protection of the professional interest of the members of the State Bar.

Therefore, the specific target population of this agency is limited to those who are members of the State Bar.

#### Overlapping Functions

The State Bar does not perform any regulatory functions which directly relate to or overlap the regulatory functions of any other state agency. The population over which the State Bar has jurisdiction is not subject to any direct or indirect regulation by any other state agency.

Exhibit IV-1 shows the functions of the State Bar of Texas in comparison with the regulatory functions of five state agencies. As shown by the Exhibit, the State Bar does not perform the usual functions of a state regulatory agency.

#### Consolidation Potential

A review of the State Bar's duties and responsibilities reveals that there is little relationship to the usual functions of a state regulatory agency. Duties of the State Bar are more related to and substantially parallel those functions of

"professional societies" composed of the membership of other regulated populations. Therefore, consolidation of the State Bar of Texas with another state agency because of overlapping functions or populations does not seem appropriate.

#### Required Professional Expertise

Professional expertise is generally thought to be necessary for the effective performance of the more complex duties and responsibilities of all regulatory agencies. As previously stated herein, the State Bar of Texas performs few of the usual duties of typical regulatory agencies. However, there are two areas of State Bar responsibility which require professional knowledge and skill.

Under rules promulgated by the Supreme Court of Texas the State Bar has the responsibility for:

1. Discipline and suspension of members.
2. Unauthorized practice of law.

In both of the listed areas of responsibility the rules provide for the appointment of a Grievance Committee or committees for each Bar district which has the primary responsibility for initiating action on complaints against member attorneys and those charged with unauthorized practice of law. Services of these committee members are gratis with the Bar paying travel expenses, court costs, and all other expenses reasonably incurred in the discharge of the duties of such committees.

#### Summary

The members of the State Bar are not subject to regulation by any state agency. They are a self-regulating group, operating under rules promulgated under the statutory authority of the Supreme Court. However, all rules promulgated by the Supreme Court must be voted on by at least 51 percent of the membership, with a simple majority vote of those voting, necessary for passage.

The autonomy of the State Bar of Texas is epitomized in a direct quotation from a response of the General Counsel of the Bar to a request for information by a member of the Sunset Advisory Commission. The statement follows:

No discipline can be assessed or imposed upon any member of the State Bar without the agreement of the accused attorney except by action of a trial court in the county of the accused attorney's residence. Furthermore, no ethical rule can be enacted without the approval and promulgation by the Supreme Court of Texas.

There are no regulatory agencies with programs or populations which overlap the programs and population of the State Bar. Therefore, there seems to be little potential for consolidating the State Bar of Texas with any existing state regulatory agency.

### Criterion 5

Whether the agency has recommended to the legislature statutory changes calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates.

The review under this criterion centered on statutory changes which affect the operations of the agency. In the period covering the last three legislative sessions, the review focused on both proposed and adopted changes in the law; prior to that period, the staff review was limited to only adopted changes. In analyzing these changes, the approach was taken that a statutory modification must be of clear benefit to the state's citizens to be considered to be in the interest of the public.

The State Bar of Texas has been active in recommending legislation as well as taking a position on legislation it has not recommended. Legislation recommended by the Bar has been varied in that it has proposed changes to numerous statutes, including the State Bar Act. The Bar sponsors legislation through its legislative program. This program is currently administered through its Department of Governmental Affairs. Sections or committees of the Bar must file proposed legislation with this department which in turn submits it to the board of directors. The board, in turn, refers it to the legislative liaison committee for further study and recommendations. The board of directors gives final approval for the inclusion of bills in the Bar's legislative program.

Exhibit V-1 presents a tabular synopsis of legislative changes affecting the State Bar proposed during the last three legislative sessions. While some of these changes have been proposed by the Bar, many have not. Those proposed changes not introduced by the Bar have usually been opposed by it and have generally failed

to pass the legislature. The majority of the bills introduced fall into two categories: bills dealing with entry into the profession and bills dealing with the Bar's expenditures.

EXHIBIT V-1

Tabular Synopsis of Proposed Legislation  
1973-1977  
State Bar of Texas

<u>Session</u>	<u>Bill</u>	<u>Proposed Change</u>	<u>Action</u>
63rd (1973)	H.B. 287	Would have repealed Article 306a V.T.C.S. relating to the prerequisites for taking the Bar examination for license to practice law.	Failed
	H.B. 340	Amended Article 306a by permitting service as a judge of any court of record in the state for 10 consecutive years to be substituted for the prelegal study and training required to take the Bar exam.	Adopted
	H.B. 411	Prepaid Legal Services Act - regulation of certain prepaid legal services by the Board of Directors of the Bar (five Texas Classroom Teachers Association pilot projects).	Adopted
	H.B. 996	Creation of a Client's Security Fund, financed by assessment of State Bar members, to relieve pecuniary losses caused by dishonest conduct of Bar members.	Failed
	S.B. 796	Same as H.B. 996.	Failed
64th (1975)	H.B. 395	Exempted graduates of Texas law schools approved by the American Bar Association as well as persons having completed 80 semester hours of instruction from taking Bar exam.	Failed
	H.B. 424	Amended Article 320a-1, Section 3 by authorizing limited, supervised practice of law by: law school graduates awaiting Bar examination results; law students who have completed two-thirds of the required curriculum; law students who have completed one-half of the required curriculum provided that the student is enrolled in a clinical education course.	Adopted

<u>Session</u>	<u>Bill</u>	<u>Proposed Change</u>	<u>Action</u>
	H.B. 847	Similar to H.B. 424.	Failed
	S.B. 28	Authorized delivery of prepaid legal services by nonprofit corporations and certain insurance companies.	Adopted
	S.B. 316	Would have repealed the requirement that licensed attorneys pay dues or fees to the Supreme Court or State Bar as a prerequisite to practice law.	Failed
	S.B. 512	Would have extended eligibility to take the Bar examination to: persons having completed 90 semester hours toward a bachelor's degree; persons employed in the office of, and under direct supervision of, a licensed attorney for at least 36 months, and at least 30 hours per week prior to the Bar exam.	Failed
65th (1977)	H.B. 478	Would have amended Article 320a-1, Section 3 by providing that all persons licensed to practice law be subject to the provisions of Articles XII and XIII of the State Bar rules and the rules promulgated by the Supreme Court.	Failed
	H.B. 479	Would have amended Article 320a-1, Subdivision (B), Section 4, Chapter 1, whereby revenues received by the State Bar would be deposited in the General Revenue Fund to be subject to appropriation by the legislature as other General Revenue Fund monies.	Failed
	H.B. 1251	Would have amended Article 320a-1 by adding a Section 3A authorizing the Bar to receive information about criminal records of persons declaring an intent to study law or applying for admission to the Bar.	Failed
	H.B. 1789	Would have amended Article 320a-1, Section 2 by prohibiting the use of State Bar funds to influence legislation or for political campaigns, or to poll Bar members on legislation or political campaigns.	Failed
	H.B. 1932	Would have amended Article 320a-1, Subdivision (B), Section 4, by increasing the \$4 minimum fee the Supreme Court could prescribe per annum for members of the Bar to \$25, but also imposing a maximum fee of \$50.	Failed

EXHIBIT V-1  
cont'd.

<u>Session</u>	<u>Bill</u>	<u>Proposed Change</u>	<u>Action</u>
	H.B. 2170	Would have amended Article 320a-1 by adding a Section 2a limiting the compensation of the executive director of the State Bar to an amount not to exceed the salary of an associate justice of the Supreme Court, and that of the general counsel of the State Bar to an amount not to exceed the salary of the state prosecuting attorney before the Court of Criminal Appeals.	Failed
	S.B. 228	Similar to H.B. 1251.	Failed
	S.B. 745	Same as S.B. 316, Sixty-fourth Session.	Failed

Of the 19 bills proposed in the last three sessions, 11 have dealt with some aspect of entry into the profession. House Bills 287 and 340 in the Sixty-third session and H.B. 395 and S.B. 512 in the Sixty-fourth session dealt primarily with eligibility requirements to take the State Bar examination. Of these, only the most restrictive and narrow in scope passed (H.B. 340). Then, during the Sixty-fourth session, H.B. 424 and S.B. 847 were introduced. These two pieces of legislation authorized the limited, supervised practice of law by eligible law students and graduates prior to passing the bar exam. H.B. 424 eventually passed. H.B. 1251 and S.B. 228 of the Sixty-fifth legislative session would have authorized the State Bar to receive information on criminal records of persons declaring an intent to study law or seeking admission to the Bar. The State Bar favored these two measures, however, both failed to pass. A bill introduced both in the Sixty-fourth (S.B. 316) and Sixty-fifth (S.B. 745) sessions which would have made payment of Bar fees and dues voluntary, but which was opposed by the Bar, was defeated. Another measure introduced during the Sixty-fifth session which would have placed a minimum and maximum amount in fees and dues charged to members was also opposed by the Bar and failed (H.B. 1932).

Another category of proposed legislation has dealt with State Bar expenditures. These measures have been aimed at bringing financial accountability to the operations of the State Bar. Three proposed pieces of legislation offered during the Sixty-fifth legislative session which would have placed certain limitations on the expenditure of the State Bar's revenues were all opposed by the Bar and eventually defeated (H.B. 479, 1789, 2170). One of these, H.B. 479, would have brought the State Bar under the appropriations process.

#### Summary

The Bar has taken an active role in recommending a variety of legislation as well as taking a position on legislation it has not recommended, but which affects its activities. In recent sessions, the Bar has opposed efforts to make entry into the profession less restrictive. These efforts have been successfully defeated. In addition, legislation proposed to make the Bar more accountable for its revenues has also been opposed by the Bar and defeated.



### Criterion 6

The promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

The review under this criterion centered on: 1) an identification of the type and frequency of complaints received by the agency, 2) the adequacy of administrative procedures used to process these complaints, and 3) the appropriateness and patterns of actions taken to address the complaints. Information for the review was obtained through interviewing agency staff, examining complaint files, and analyzing data presented in the agency's self-evaluation report.

Attorney discipline has traditionally been relegated to the individual states and territories, and each jurisdiction has developed its own disciplinary enforcement system. The State Bar of Texas, a unified Bar, cites attorney discipline as one of its primary purposes. Although 18 states were reported as having rather divergent disciplinary systems for practicing attorneys, the major difference appears to be the degree of attorney participation in disciplinary matters.

A 1977 survey conducted by the Office of the General Counsel of the State Bar indicated that 331 attorneys contributed an estimated 20,000 voluntary man hours per year to the investigation and resolution of complaints received against attorneys.

Grievance matters are referred to one of the 40 autonomous Bar District Grievance Committees in the 17 State Bar districts. Each committee is comprised of from five to 15 attorney members nominated by the district member or members on the State Bar Board of Directors. Appointments to the committees, however, are made by the State Bar President. In addition to the members, the committees are assisted by an estimated 125 volunteer prosecutors, according to the General Counsel of the State Bar of Texas.

Any person has the right to register a complaint with any member of the State Bar of Texas against either a licensed attorney or an individual engaged in the practice of law without the benefit of training or licensure. In a policy statement issued April 3, 1970, the State Bar Board of Directors amended and reaffirmed in part previously stated policies regarding the operation of state-wide grievance procedures:

The State Bar Act places the responsibility and duty to discipline lawyers with the Board of Directors of the State Bar of Texas. It has been and is now the policy of the Board of Directors to perform such duties by and through District Grievance Committees established in bar districts as more fully set out in Article XII of the Rules Governing the State Bar of Texas. To that end, it is the consensus of this board that the director of each district, acting by and through the General Counsel of the State Bar of Texas, shall be responsible to the Board of Directors for the operation of the committee or committees established within his district.

Other provisions related to specific procedures which mandated that at the first meeting of the Board of Directors following adjournment of the annual State Bar Convention, each director shall recommend nominations to the president for membership on local committees, naming representatives of all segments of the Bar. Concerning committee membership, the General Counsel states:

... Membership of the committees is composed of representatives of the trial bar, that is, plaintiff's attorneys and defense attorneys, criminal law practitioners, office practitioners, general practitioners, and representatives of ethnic groups, where such groups are a significant part of the lawyer population of the Bar district.

Each director may attend all meetings of the Grievance Committees in his district and may participate fully in the proceedings. Although the director has no vote concerning committee actions, he and the committee chairman, elected among the members, are empowered to call Grievance Committee meetings.

However, records of the attendance and participation of directors at the meetings of local grievance committees were not available for review.

### Grievance Committees

Section 1, Article XII, State Bar Rules, allows one or more Grievance Committees for each of the Bar districts designated by the Board of Directors, with the advice of the director for each Bar district. Presently of the 17 districts, five districts have one committee, six districts have two committees; four districts have three committees, one district has four committees and Harris County District Four has seven committees.

Each grievance committee member must be a resident of the district for which he is appointed and may serve for a three-year term beginning upon adjournment of the annual meeting of the State Bar. All members are eligible for re-appointment.

A majority of the committee constitutes a quorum for the conduct of business and the hearing of grievance matters. The members annually elect a chairman who presides at the meetings. Section six of the State Bar Rules provides that members may be disqualified to act and may be excluded from consideration of a matter before the committee if there is a potential conflict of interest. If the chairman or a majority of the members feel that one or more temporary members are needed, the president is authorized to make such appointments, on request, for consideration of the matter in question.

### The Role of the General Counsel

A more complete role of the General Counsel in grievance matters was defined by the Board of Directors at its April, 1975 meeting in a statement of policy:

(10) Since Article V, Sec. 4b of the State Bar Rules expressly provides that the General Counsel is to expedite, coordinate, and standardize the procedure, method and practice for the processing of grievance complaints, the Board of Directors hereby directs the General Counsel to implement immediately the following additional procedures in an effort to streamline and make more efficient such grievance procedures:

(1) establish a procedure whereby all grievance matters are brought to the attention of the General Counsel upon both initiation and conclusion; . . . .

(2) with the concurrence of the bar director of a district, to request the reassignment of a grievance matter from one committee to another within that district, consistent with the State Bar Rules;

(3) with the concurrence of the Bar director of the district, to request the resignation of any member of a grievance committee in that district and the appointment of a successor member, consistent with the State Bar Rules;

(4) with the concurrence of the Bar director of the district, to recommend such realignment of grievance districts from time to time as will provide a more efficient administration of grievance proceedings, consistent with the State Bar Rules;

(5) to seek the active and continuing aid of local bar associations in the handling, filing, and prosecuting of grievance matters;

(6) to require regular reports from each grievance committee setting forth the number of complaints pending, the number of complaints acted upon, the reason for the action taken, and the number of new complaints filed since the date of the last report;

(7) that each grievance committee shall meet at least once per month, unless compelling circumstances dictate otherwise;

(8) that three absences during any Bar year of a grievance committee member may be deemed to be grounds for removal of such committee member;

(9) that the General Counsel furnish each Grievance Committee with a Docket Book for the recording of the

minutes of the committee's meetings. That the secretary of the committee shall be charged with the responsibility of maintaining such Docket Book. The minutes shall consist of the nature of the complaint, the date filed, the action taken by the committee, the date of such action, and the reason therefor. A copy of the minutes of each grievance committee meeting shall immediately be forwarded to the General Counsel.

(10) that all completed Docket Books and closed files shall be forwarded immediately to the General Counsel of the State Bar of Texas. Such file shall be preserved for a reasonable period of time not to exceed 10 years.

(11) that procedures be implemented to provide all reasonable and necessary investigation requested by grievance committees; and

(12) that the primary responsibility for the prosecution of disciplinary actions shall be that of the General Counsel, though the General Counsel may seek the assistance of any counsel appointed by the Grievance Committee as provided by Article XII, Section 23 of the State Bar Rules.

Source: Manual for Grievance Committees, State Bar of Texas, Office of the General Counsel. Revised 1978.

The Manual for Grievance Committees, published by the Office of the General Counsel under authority granted in the statement of policy issued by the Board of Directors in April, 1975, is available for the exclusive use of the local Bar District Grievance Committees. The manual outlines and interprets rules relating to grievance matters and the suggested procedures which should be used to resolve complaint issues. Additionally, other procedures manuals are available for committee chairpersons, secretaries and individual members. Specific assistance may be provided in the following broad areas by the Office of the General Counsel upon request from a Bar district grievance committee:

1. Seminars
2. Administrative Procedures
3. Investigations

4. Research
5. Legal Advice
6. Pleadings
7. Prosecutions
8. Briefings
9. Appellate Matters.

The 1975 Statement of Board Policy provides that the General Counsel may require regular reports from each committee indicating the number of complaints pending, acted upon, and the number received since the date of the preceding report. In addition, each grievance committee is requested to meet at least once each month and to forward minutes of meetings to the General Counsel immediately stating the nature of each complaint, the date filed, the action taken by the committee and reasons for stated action. In an interview with the General Counsel it was indicated that not all Grievance Committees cooperate in preparing and filing the reports and minutes as requested by the General Counsel. Furthermore, the General Counsel cannot compel the autonomous committees to comply with his policy statements and requests for information. Therefore, the role of the General Counsel is advisory, upon request of the committees.

#### Forms and Procedures

As "coordinator" of the attorney professional self-discipline procedures used by the State Bar, the General Counsel has made available detailed, written procedures and suggested forms for the adoption and use of local grievance committees. Upon receipt of a written complaint, it is suggested that the secretary to the chairman of the committee assign a number to the accused attorney on a file card which will serve as the record of the complaint. The first

attorney complained against will always have the number "1", the second will be assigned the number "2". If at a later date a second complaint is received against the attorney assigned the number "1", the number of the complaint will be "1.2." The committee manual for the secretary of the committee suggests that this is an easy way of keeping abreast of the number of complaints received against an attorney and a record of complaint disposition.

Two index cards may be prepared for each attorney complained of; one is to be filed alphabetically, by the surname of the accused attorney, and the other is to be filed numerically, based on numerical order of the cases recorded in the docket book of the committee supplied by the State Bar.

The manual suggests that letters be sent to both the complainant and the accused attorney informing them of: 1) receipt of the complaint by the committee, and 2) the name of the committee member assigned to handle the investigation of the facts of the case. However, the letter to the accused attorney is to be sent by certified mail, return receipt requested. It is further specified that the letter to the accused attorney should be sent by the committee member assigned to the case, along with a copy of the complaint and a memorandum explaining the functions and procedures of the committee used for handling complaints. A response, in writing, is requested at the earliest convenience of the accused or within a time period established by the chairman.

A sample form letter in the committee manual recommends that, "to expedite this matter," the accused attorney send a copy of his reply directly to the complainant, or that a copy will be sent by the committee, at the option of the accused attorney. Provision is made to later inform the accused of the necessity to hold a hearing on the grievance issue.

Section 12 of Article XII provides that where the complaint appears to be of the nature which will not require "any disciplinary action and can probably be dismissed without the necessity of hearing the accused attorney, the committee need not notify him of the filing of the complaint." As a result, under the self-discipline procedures used by the State Bar of Texas, an attorney may never know of a complaint filed against him with the local grievance committee.

Over the three-year period reviewed, an estimated 8,467 complaints were received by the State Bar and the local district grievance committees. Of this number, it was reported in the self-evaluation report that 8,313, or 97 percent, were estimated to have required no action and were therefore dismissed.

Complaints may be dismissed by the committee upon a finding by the investigating member of no professional misconduct, as defined in Section 8 of Article XII of the State Bar Rules, the Code of Professional Responsibility. An Order of the Supreme Court dated December 20, 1971 amended Articles XII and XIII by promulgating a new code, consisting of nine canons of ethics and the Disciplinary Rules (p.264, Volume 1A, V.A.C.S.). The Code is used by each grievance committee member as the basis for evaluating the nature and validity of complaints against licensed attorneys.

A suggested memorandum to the attorney complained of states:

In the event that the member feels that the nature of the complaint and your response to the complaint require additional investigation, the member of the committee will forward a copy of your letter to the complaining party and request the complaining party to review that letter and respond in writing to the member of the committee, should the complainant desire to do so. In the event that the member of the committee does not hear from the complainant within a reasonable time (10 to 14 days), the complaint will probably be dismissed at the next full meeting of the grievance committee.



If the complainant does respond to the member in answer to the letter submitted by you, the member of the committee will make a determination as to whether the matter should be disposed of without further action or whether further investigation is needed.

A narrow interpretation of the instructions given the grievance committees would suggest that the grievance committee member must make initial judgements regarding the validity of complaints assigned to his investigation workload by the chairman of the grievance committee. Such a policy also may focus on the requirement that the complainant have specific evidence of a violation of the Code of Professional Responsibility.

The Grievance Procedures Manual also suggests that a complaint form should be acquired by the investigating member and completed by the complainant. The information requested of the complainant on the suggested form ranges from names, addresses and occupations of both the complainant and spouse to the name and address of the employers of both the complainant and spouse. It could not be determined that such detailed information would have a bearing on the complaint or should be required concerning the complainant's employment or family status since it is not also required of the accused attorney.

It would appear reasonable that specific information requested of the complainant might include only general information which identifies the individual, the nature of the reported grievance, and procedures which may be used if further contact with the complainant is necessitated during the investigation and resolution of the complaint. Formalities not directly required under law or court rules, when closely scrutinized, may be found to have potentially restrictive effects on the interest of the public in seeking answers to questions related to the professional conduct of attorney practitioners.

Complaint records are maintained by the local district grievance committees. Therefore, a determination of the use made of information gathered during the investigation and resolution of complaints could not be made.

Although the self-evaluation report states that individuals having complaints against attorneys may file their written complaints with any officer, director, employee or member of the State Bar and no mention is made of oral reports of professional misconduct on the part of licensed attorneys, the April, 1970 statement of policy of the board of directors indicates:

(3) A committee is authorized to consider any written or oral report of professional misconduct alleged to have occurred within the District or to have been committed by an attorney who resides or has an office within the district which comes to the attention of any member of the committee from any source whatsoever, including newspapers or other news media.

It appears that such a policy statement was an indication of board concern for easy public access to the attorney disciplinary system. Interviews with the general counsel revealed that oral complaints are often received at the Austin office and referred to the local grievance committees having jurisdiction, but not all local committees regularly report the receipt of complaints to the Office of the General Counsel. Although local committees may receive oral complaints, some committees have required under Section 11 of the State Bar Rules that complaints filed be reduced to writing or sworn statements, according to interviews with the general counsel.

No comparison of the disposition of oral and written complaints could be made due to the general absence of complete committee reports concerning the activities of the 40 local grievance committees. Similarly, due to the autonomy of the local grievance committees, a determination of the consistency of procedures

used to investigate complaints and to develop facts which justified the local district committee actions taken on complaint issued could not be made, since such records are confidential. The procedures developed by the General Counsel may, therefore, have little bearing on the activities of grievance committees.

### Hearings

Grievance matters may be referred to the entire committee, and the complainant may be requested to appear, with witnesses and supporting documents, if the preliminary investigation does not yield a satisfactory determination that the complaint should be dismissed or resolved. In conducting a hearing as part of the investigation of a complaint, the name of the accused attorney and the proceedings are private, under the provisions of Section 12 of the State Bar Rules. "The hearing before a grievance committee is similar to a grand jury investigation and rules of secrecy and confidentiality should be strictly observed." State v. Sewell, 487 S.W. 2d 716 (Tex. Sup. 1972) .

It is firmly established that the grievance committee meetings are not adversary in nature, and the accused attorney is not entitled to confront and cross-examine witnesses. The aim of the ex parte inquiry by the local committee is to determine whether grounds for disciplinary action exist.

Before the committee may issue any recommendation or censure, the accused attorney should be permitted to produce witnesses on his own behalf and may also be represented by counsel. All witnesses, except the accused attorney, may be subpoenaed to testify before the full committee. Under policy of the Board of Directors, all witnesses, including the accused attorney shall be placed under oath, the function of the committee being accusatory only. Any trial and determination of the facts may be made in the district court.

When a formal complaint is voted by a majority of the committee, the primary responsibility for the prosecution of the case is that of the Grievance Committee, although the General Counsel may actively participate in the prosecution upon request from the committee.

#### Grievance Committee Actions

If the committee should vote to reprimand the accused attorney, the accused must be notified either by being required to appear before the committee or by registered mail. The form of notice and publicity (public or private reprimand) given the reprimand may be decided by the committee. A reprimand may not be issued, under Section 16(b) of the State Bar Rules, however, unless the accused attorney has been afforded notice and the opportunity to be heard.

After the reprimand is issued, the accused may either accept within 10 days after delivery or file an action (suit) in the district court in the county of his residence to have the grievance committee reprimand set aside. In such cases, the trial is do novo and the burden of proof is on the grievance committee. The reprimand becomes final, however, if no suit is filed and copies of the reprimand and the complaint are forwarded to the clerk of the Supreme Court and the Secretary of the State Bar. At the discretion of the committee a copy may also be sent to the clerk of the District Court of the residence or office address of the attorney for entry into the minutes of the court. Additionally, a memorandum of the reprimand is made on the membership rolls of the Supreme Court.

If the committee finds that the misconduct justifies the revocation or suspension of the license of the accused attorney (for a period not to exceed three years), the attorney's agreement to the action gives such a judgment the force and effect of a judgment of the District Court of the county of the residence of the

accused attorney. If the license is revoked, the clerk of the Supreme Court strikes the attorney's name from the membership rolls; if the license is suspended, the clerk strikes the name from the rolls for the time specified in the judgment rendered by the grievance committee.

While "complaints" are defined in Section 7 of the Rules of the State Bar as all complaints brought before a grievance committee, whether verbally or in writing, the "Formal Complaint" is defined as "the pleading by which a disciplinary action is instituted by a grievance committee in District Court." Moreover, Section 5 of Article 320a-1, the State Bar Act, provides the accused attorney with "the right to trial by jury in disbarment proceedings, in the county of residence of the defendant."

Under the provisions contained in Section 6 of Article 320a-1, the accused attorney cannot be suspended until he has been convicted of the charge pending against him in a court of competent jurisdiction in the county of his residence. The Manual for Grievance Committees states that "Sections 5 and 6 of Article 320a-1 are not mere venue statutes, but are jurisdictional in nature such that the grievance committees are not entitled to a change of venue even if it can be shown that a fair trial cannot be held in the county of the attorney's residence. Mc Gregor v. Clawson, et. al. 506 S.W. 2d 922 (Tex. Civ. App. - Waco 1974, no writ)." A later decision of the court State v. Pounds, 525 S.W. 2d 547 (Tex. Civ. App. - Amarillo 1975, writ ref 'd, N.r.e.) appears to be in direct conflict with Mc Gregor, but commentary in the Manual for Grievance Committees indicates that the matter will hopefully be resolved by the Supreme Court of Texas.

In contrast, upon proof of conviction of the accused attorney in any trial court of any felony involving moral turpitude or of any misdemeanor relating to

theft, embezzlement, or fraudulent appropriation of money or other property, Section 6 of Article 320a-1 provides that the district court of the county of residence of the convicted attorney is empowered and specifically mandated to enter an order suspending the convicted attorney from the practice of law while the appeal of such a conviction is pending. If the attorney is given probation, he is suspended from the practice of law for the period of his probation. Finally, if probation is not given or has been revoked, the district court of the county of the residence of the convicted attorney enters a judgment disbaring him from the practice of law. The Supreme Court of Texas equates resignations (even under threat of disbarment) with disbarments.

Under these rules, therefore, Texas remains one of the two states which provide the accused attorney a right to trial by jury in disciplinary cases. This right also extends to an attorney who has been administered a private reprimand.

Section 12, Article XII, State Bar Rules provides that the name of the accused attorney and the proceedings are to be kept private. Therefore, records of the 40 district grievance committees handling of complaints are not always available to the State Bar of Texas. The autonomous nature of each local grievance committee precludes any enforcement of the reporting procedures established by the board of directors, to be effected through the Office of the General Counsel. Additionally, ". . . it has been held by the court Karlin v. Culkin, 248 N.Y. 465, 162 N.E. 487, 60 A.L.R. 851, 859 (1928), that the remedy to the effect of a summons to appear upon the reputation of the accused attorney was to make the preliminary investigation secret. The grievance committee is held to be an administrative agency of the judicial department and is the arm of the Supreme Court in the discharge of its professional policing duties.

The State Bar estimates that 75 percent of all complaints filed fail to state a breach of the Code of Professional Responsibility and are, as a result, beyond the jurisdiction of the agency. Under such circumstances, the complainant is so informed and has a right to submit additional information. A re-submitted complaint may then be reconsidered in light of the new facts.

The estimated number of complaints reported by the State Bar in the self-evaluation report under the "No Action Required" category grew from 2,103 in fiscal year 1975 to 3,413 in fiscal year 1977, or 62 percent over the three-year period reported. Similarly, the total estimated number of complaints received grew from 2,163 to 3,500, or 62 percent over the three year period covered in the review.

The following analysis compares data submitted by the general counsel during the review to the data contained in reports concerning complaint disposition submitted to the Office of the General Counsel by the local grievance committees and reported in the State Bar Self-Evaluation Report:

EXHIBIT VI-1

State Bar of Texas  
Complaints  
Reported in Self-Evaluation Report  
1975-77

	<u>1975</u>	<u>1976</u>	<u>1977</u>
Complaints Received*	2,163	2,884	3,500
Referred to Other Agency	20	30	35
No Action Required*	2,103	2,797	3,413
Reprimands Issued	16	31	25
Suspensions	8	18	23
Resignations/Disbarments	16	8	4
Unauthorized Practice	58	16	20

\*Estimated by Office of General Counsel

Again, these were estimates prepared by the Office of the General Counsel since it is the sole responsibility of the local district grievance committee to take action to receive, investigate, analyze and dispose of complaints against attorneys. The following analysis presents a breakdown of the 17 local Bar districts into counties served and workload reports of the local district grievance committees which were brought to the attention of the Office of the general counsel formally or informally:

Although the data in Exhibit VI-3 are only estimated totals which were reported by the Office of the General Counsel for each Bar District Grievance Committee, the estimated number of complaints reported in 1976 ranged from a low of 15 complaints for Bar District Eleven, to a high of 310 complaints in Bar District Four. Correspondingly, for 1977 the lowest estimate of complaints processed was 12 complaints for Bar District 16, with the highest number again reported for Bar District Four, 304 complaints.

The highest complaint-per-attorney ratio (based on June 30, 1978 attorney population estimates) reported in the estimated data for 1976 submitted by the general counsel was 0.108 reported for Bar District Seventeen; the lowest 1976 ratio was 0.016 reported for Bar District Eleven. The 1977 estimated figures ranged from the highest complaint-per-attorney ratio of 0.092 for Bar District Eight to the lowest, 0.018 reported for Bar District Sixteen.

The highest attorney-per-committee ratio was reported for Bar District Six, (5,124:1), while the lowest such ratio was reported for Bar District Fourteen, (218:1). Although the validity of such comparisons was affected by the "estimated" nature of the data provided concerning local Bar District Grievance Committee actions, consideration of urban and rural districts could only be based on the



EXHIBIT VI-2

State Bar of Texas  
State Bar Districts

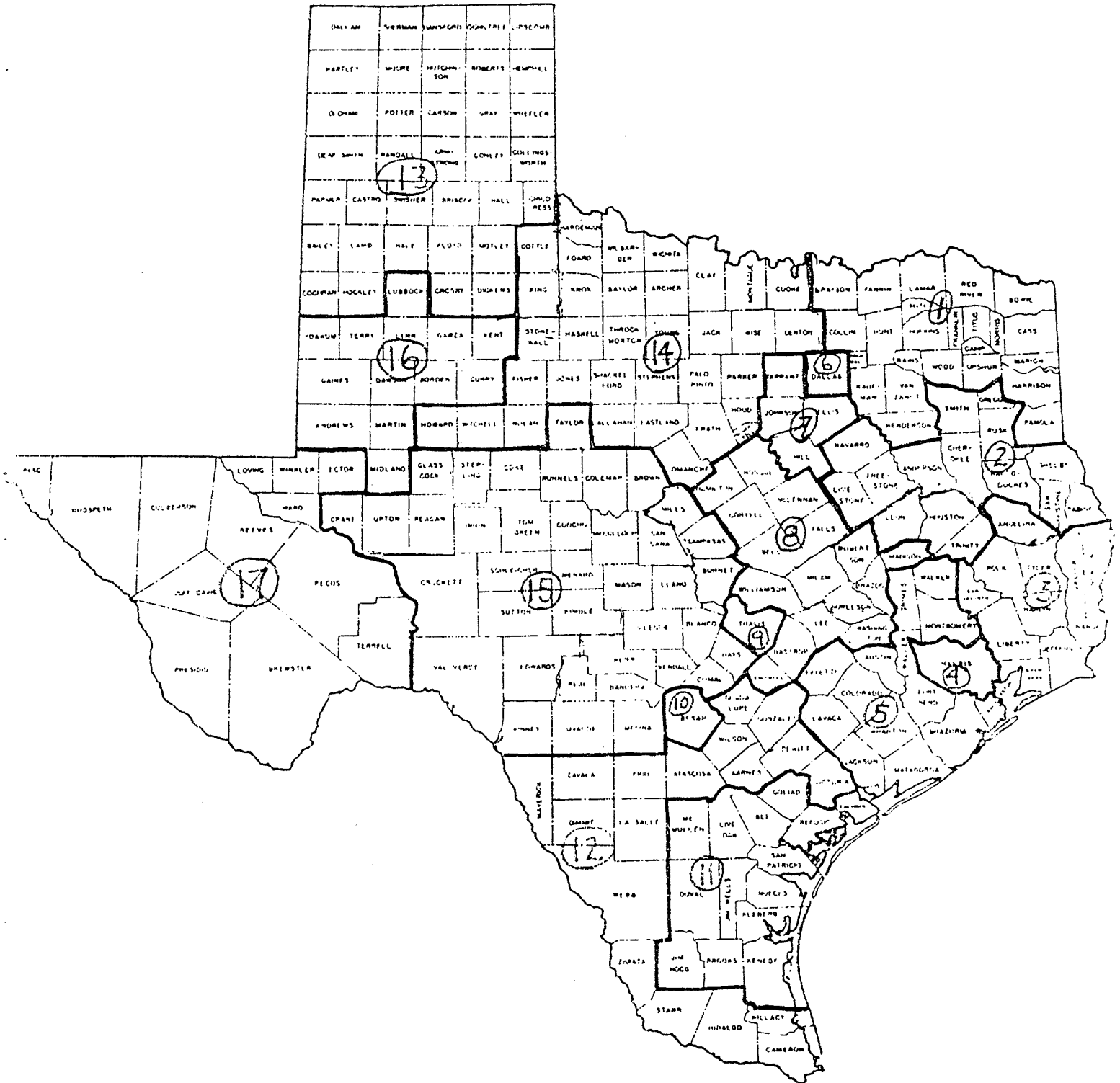


EXHIBIT VI-3

State Bar of Texas  
 Estimated Grievance Committee Complaint Workload  
 As Reported by General Counsel for Each Bar District  
 1976-1977

Bar District	No. Counties	No. Grievance Committees	No. Attorneys (6-30-78)	Attorneys/Committee	No. Complaints Reported		No. Complaints/Attorney 1976	No. Complaints/Attorney 1977
					1976	1977		
1	24	2	720	360	67	42	0.093	0.038
2	15	3	674	225	41	26	0.061	0.038
3	11	2	669	335	49	35	0.073	0.032
4	1	7	8,004	1,143	310	304	0.039	0.038
5	14	3	848	283	41	39	0.048	0.046
6	1	1	5,124	5,124	104	149	0.020	0.029
7	4	2	1,497	749	156	112	0.104	0.075
8	16	2	814	407	51	75	0.063	0.092
9	1	1	2,121	2,121	111	89	0.052	0.042
10	1	1	1,895	1,895	45	145	0.023	0.077
11	15	2	907	454	15	20	0.016	0.022
12	18	3	776	259	42	32	0.054	0.041
13	35	1	662	662	52	43	0.079	0.065
14	34	3	654	218	31	35	0.047	0.056
15	38	4	719	180	37	46	0.051	0.064
16	13	1	685	685	34	12	0.049	0.018
17	13	2	769	385	83	34	0.108	0.044
Totals 17	254	40	27,538	911	1,239	1,238	0.058	0.050

relationship of counties in the bar district, the attorney population in the bar district, and level of reported complaint activity made known to the Office of the General Counsel. Moreover, the total number of complaints reported for the two years included in the estimates differed by only one complaint, with 1,239 complaints in 1976 and 1,238 complaints in 1977.

Significantly different totals were reflected in the self-evaluation report submitted by the agency--2,884 complaints in 1976 and 3,500 complaints in 1977. Therefore, this analysis complaint activity by Bar District indicates that the Office of the General Counsel does not receive complete reports of local Bar district grievance committee activity on a regular basis.

#### Summary

In summary, detailed procedures have been developed and published in a Manual for Grievance Committees for the receipt, hearing and resolution of complaints received by either the State Bar Austin office or the local autonomous Bar District Grievance Committees. The guidelines, however, are only advisory since the procedures and records of local grievance committees are not mandated to be disclosed to the State Bar of Texas.

A determination of the types and frequency of complaints received by the local grievance committees against attorneys could not be made since complaints resulting in private reprimands or dismissals often remain in the private record of the local committees.

The degree of control and jurisdiction exercised by the local grievance committees in the disposition of complaint issues is private, and local grievance committee members must be members of the Bar and must reside in the bar district for which they will consider complaints against licensed attorneys.

The specific investigatory expertise of grievance committee members has a direct bearing on the disposition of complaints received against attorneys residing in the Bar district served, since each member must conduct the initial determination of the validity of complaint issues against other local attorneys residing in the particular district. Thus, a single member of the Bar must make a decision concerning a complaint against a fellow professional, even though both individuals are licensed to engage in the practice of law in what may often be a small geographical and professional atmosphere.

During the review, only the estimated number of complaints filed against practicing attorneys in the State of Texas had been reported by the State Bar of Texas in the self-evaluation report to the Sunset Advisory Commission. Therefore, no definite identification of specific problem areas under this criterion could be made because the data are not received by the Office of the General Counsel on a regular and timely basis. Furthermore, even in light of the clearly defined, written grievance procedures which have been mandated by policy of the State Bar Board of Directors and developed and provided by the general counsel for use by the 40 local Bar District Grievance Committees, absolute statements regarding the nature and manner of performance of the complaint disposition function by such a fragmented and decentralized system could not be made.

### Criterion 7

The extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates, and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

Rules of the State Bar of Texas are promulgated under the authority of the Supreme Court. The Supreme Court, under Section 4 of Art. 320 a-1, not the State Bar, has the responsibility to prepare and propose rules and regulations for the discipline of attorneys. These rules are subject to the majority vote of 51 percent of the State Bar membership before promulgation by the Supreme Court. No specific provision is made in the rule-making process of the State Bar for public participation and no instances of public participation were identified in the review. It is the opinion of the General Counsel's office that the State Bar is not subject to the Administrative Procedures Act, therefore notices of Bar meetings and proposed rule changes are not printed in the Texas Register. The public may participate indirectly in the rulemaking processes of two programs of the State Bar. The Board of Legal Specialization is advised by a lay board and several lay members sit on the board of the Texas Prepaid Legal Services program.

None of the operations of the State Bar fall within the purview of the Administrative Procedures Act and the publication of rules and/or proposed rule changes is not required.

### Summary

The agency has not encouraged participation by the public in its rule-making process. Public participation is limited both by the absence of provisions for public

participation in the rulemaking procedure established by the Supreme Court and the contention of the General Counsel's Office that the State Bar is not subject to the Administrative Procedures Act.

### Criterion 8

The extent to which the agency has complied with applicable requirements of an agency of the United States or of this state regarding equality of employment opportunity and the rights and privacy of individuals.

The review under this criterion centered on an identification of agency Equal Employment Opportunity reporting requirements and policies regarding the rights and privacy of individuals. Federal and state statutes were reviewed; agency policies and procedures were documented; and appropriate agency files were inspected to determine the adequacy of records maintained to verify the data presented under this criterion. The Governor's Office of Personnel and Equal Employment Opportunity was consulted. The general procedures regarding personnel actions and protection of the rights and privacy of individuals were examined through interviews and review of files.

The State Bar of Texas filed an Affirmative Action Plan with the Governor's Personnel and Equal Employment Office dated February 1, 1975 which was to extend for three years ending January 31, 1978. The hiring goals of the 1975 plan were updated in July, 1977 in connection with an EEOC Conciliation Agreement which extends the hiring timeframe for two years ending October 30, 1979.

The Affirmative Action Plan includes a statement of policy concerning equal employment opportunity, the purpose and scope of the plan, profile statistics on both full and part-time workforces and projected employee turnover rates.

The plan also attempts to maintain contact with approximately 25 organizations and institutions which would further publicize position vacancies to potential minority applicants. Under the Conciliation Agreement, reports are prepared semi-annually concerning employee hiring practices, position category statistical

breakdowns and information dissemination.

The staff reported that the agency's employee growth rate became rapid as new functions were assumed and additional program areas emerged. A white female was hired as Personnel Director in 1974, and this position has been held by a white female since that time, with the associate director of the Bar coordinating the personnel component when the director position was vacant from December 1977 through April 1978.

During the review it was determined that a committee had recently been organized to have input in the development of position description statements and employee grievance procedures for employees of the State Bar of Texas. Currently, the personnel director maintains personnel files and screens applicants to determine their qualifications for vacant positions, but hiring decisions are made by division or department heads. Final clearance for hiring is then determined by either the executive director or the associate director, if the vacancy is that of division director or higher.

In the absence of written personnel procedures or a personnel manual for employees and applicants, it appears that due care is exercised for the rights and privacy of individuals. Proposals were under study for the development of specific position description statements by a consultant and appropriate staff during this review.

A review of the State Bar file in the Governor's Personnel and Equal Employment Opportunity Office revealed that in the professional category, hiring goals include two black males, one Spanish-surnamed male and one Spanish-surnamed female; in the technician category one Spanish-surnamed male; and in the paraprofessional category one Spanish-surnamed male, one Spanish-surnamed female and one black female. In the office/clerical and skilled craft categories



projected hiring goals seek four black males, six Spanish-surnamed males, three black females and five Spanish-surnamed females. Therefore, of the 92 projected vacancies, 26 (28.3 percent) should be filled with minority applicants under the EEOC Conciliation Agreement.

Contact with the San Antonio District Equal Employment Opportunity Commission office revealed that the Conciliation Agreement was effected in October, 1977 as a voluntary settlement of issues relating to the hiring and staffing practices used by the State Bar of Texas. Exhibit VIII-1 presents a tabular display of related data which suggests that goals have been established for increased emphasis on the hiring of minorities and women. Applicant flow data which would provide additional insight into the effects of the modified procedures used to attract minority and female job applicants were not available during the review.

#### Summary

The review disclosed that the State Bar of Texas has filed both an Affirmative Action Plan and entered into an EEOC Conciliation Agreement to comply with federal and state requirements concerning equal employment opportunity. Steps were being taken during the review to develop a personnel manual, employee grievance procedures and specific position description statements for use by current employees, potential job applicants and the concerned public.

EXHIBIT VIII-I

State Bar of Texas  
 Statistical Comparison of Affirmative Action Goals and Adjustments in Workforce  
 November 15, 1977 through May 12, 1978

Occupational Category	All Groups		White		Black		Spanish-Surnamed		Other			
	Total	M	F	Total	M	F	Total	M	F	Total	M	F
<b>Official/Administrator</b>												
AAP Goal	1	-	1	-	-	-	-	-	-	-	-	-
Terminations	1	1	-	-	-	-	-	-	-	-	-	-
New Hires	1	1	-	-	-	-	-	-	-	-	-	-
Total Staff	5	4	1	5	4	1	-	-	-	-	-	-
<b>Professional</b>												
AAP Goal	12	7	5	8	4	4	2	2	1	1	1	-
Terminations	6	5	1	5	4	1	1	1	-	-	-	-
New Hires	3	2	1	3	2	1	-	-	-	-	-	-
Total Staff	21	14	7	20	14	6	-	-	-	-	-	-
<b>Technician</b>												
AAP Goal	1	1	-	-	-	-	-	-	-	-	-	-
Terminations	0	-	-	-	-	-	-	-	-	-	-	-
New Hires	-	-	-	-	-	-	-	-	-	-	-	-
Total Staff	3	3	-	3	3	-	-	-	-	-	-	-
<b>Paraprofessional</b>												
AAP Goal	5	2	3	2	1	7	1	1	1	1	1	-
Terminations	3	-	3	3	-	3	-	-	-	-	-	-
New Hires	3	-	3	3	-	3	-	-	-	-	-	-
Total Staff	14	2	12	13	2	11	1	1	1	1	1	-
<b>Office/Clerical</b>												
AAP Goal	57	16	41	45	11	34	5	2	3	7	3	4
Terminations	9	1	8	7	-	7	1	-	1	-	-	-
New Hires	10	-	10	7	-	7	-	-	-	2	-	2
Total Staff	36	6	30	23	-	23	4	4	4	8	2	6
<b>Skilled Craft</b>												
AAP Goal	16	15	1	10	10	-	2	2	-	4	3	1
Terminations	1	-	1	1	-	1	-	-	-	-	-	-
New Hires	-	-	-	-	-	-	-	-	-	-	-	-
Total Staff	10	7	3	6	4	2	1	1	1	3	2	1
<b>Service/Maintenance</b>												
AAP Goal	1	1	-	1	1	-	-	-	-	-	-	-
Terminations	0	-	-	-	-	-	-	-	-	-	-	-
New Hires	-	-	-	-	-	-	-	-	-	-	-	-
Total Staff	3	2	1	3	2	1	-	-	-	-	-	-
<b>All Categories</b>												
AAP Goals	93	42	51	66	27	39	10	6	4	17	9	8
Terminations	20	7	13	17	5	12	2	1	1	-	-	-
New Hires	17	3	14	14	3	11	-	-	-	2	-	2
Total Staff	92	38	54	73	29	44	6	5	1	12	4	8

### Criterion 9

The extent to which the agency issues and enforces rules relating to potential conflict of interests of its employees.

The review under this criterion centered on an identification of documented agency practices and procedures regarding the filing of individual financial statements and affidavits with the Office of the Secretary of State. The provisions of the statute (Article 6252-9b, V.A.C.S.) were reviewed and agency interpretations of the nature and intent of the provisions of the Act were sought. Records maintained by the agency and the Secretary of State under the authority of the legislation concerned with conflict of interest were reviewed to determine the extent of agency compliance with the letter and intent of the Act and to verify the accuracy of the data presented under this criterion. In addition, inquiries were directed to selected areas where conflicts of interest might exist that could not be discerned through review of official documents.

According to Article 6252-9b, Section 2, Subdivision 8(A), a "state agency" is defined as:

- "any department, commission, board, office or other agency that:
- (i) is in the executive branch of state government;
  - (ii) has authority that is not limited to a geographical portion of the state; and
  - (iii) was created by the constitution or a statute of this state" (emphasis added)

According to the self-evaluation report and interviews with the Secretary of State's Office, by definition, Article 6252-9b does not apply to the State Bar. Thus, the Board of Directors and the Executive Director of the State Bar are not required to file individual financial statements or affidavits with the Secretary of State.

However, the Code of Professional Responsibility (Rules Governing the State Bar of Texas, Article XII, Section 8) which applies to all licensed attorneys, seems to provide some safeguards. Disciplinary Rule 8-10, for example, prohibits a lawyer who holds public office from using his position to: obtain special advantage in legislative matters for himself or for a client; influence a tribunal to act in favor of himself or a client; and accept anything of value for the purpose of influencing his action as a public official. In addition, Article VI-A of the State Bar rules prohibits Bar members who hold any political office or who are candidates for such an office, from holding office in the State Bar. However, there is no provision in the State Bar's rules which requires of board members or employees written disclosure of any interest, financial or otherwise, or any business transaction or professional activity which would be in conflict with the discharge of their official duties.

### Criterion 10

The extent to which the agency complies with the Open Records Act and the Open Meetings Act.

Examination of elements under this criterion was separated into components dealing with responsibilities for making agency documents available to the public under open records requirements and responsibilities for public notification of proposed agency actions. Under the area of open records, statutes were reviewed in relation to written or unwritten policies used by the agency. Where written policies did not exist, interviews were conducted to determine actual compliance. Materials contained in the self-evaluation report were verified and open records decisions reviewed. Open meetings compliance was verified through review of agency written and unwritten policies to determine if they accurately reflected statutory requirements. Interviews with agency personnel were conducted in instances where written policies were lacking or information contained in minutes of meetings was incomplete or unclear.

#### Open Records

The Attorney General has ruled that the records of the 40 local grievance committees concerning complaints against licensed attorneys are confidential and not open to public access because such deliberations are similar to grand jury proceedings. To safeguard the reputation of the accused attorney, decisions rendered by the committees are made public only in the case of public reprimands, suspensions and disbarments.

Grievance committee records, however, are held to be of an accusatory nature and not decisions of fact. It is the position of the State Bar of Texas that until such time as fact determinations are made by the grievance committee or a

court of competent jurisdiction and a public reprimand or suspension is called for, one of the accused attorney's most valuable assets -- his reputation -- must be preserved. Similarly, if the committee proceeds to trial for disbarment or if the accused attorney disagrees with the judgment rendered by the committee, the trial by jury causes the case to become public as in any civil proceeding.

Although, according to Bar staff, no case has been presented concerning the confidentiality of the records of the Standards of Admission Department and the Board of Legal Specialization, these records are also categorized as confidential. These records contain detailed information regarding the character of individuals and are used to determine applicant eligibility for admission to the Bar or to take a specialization examination. It is further stated that these records are within the exclusion enumerated in Section 3(a) of Article 6252-17a, V.A.C.S., the Open Records Act.

The only records to which the public was officially denied access were grievance committee records, requested on April 25, 1974. Attorney General Open Records Decision No. 47, issued August 29, 1974 ruled that grievance committee records and transcripts are not subject to public access under the Open Records Act. There was no further legal action taken.

#### Open Meetings

The State Bar of Texas is not required to give advance notice to the public of its regular or special meetings of the board. Section 1(c) of Article 6252-17, V.A.C.S., the Open Meetings Act, relates only to executive and legislative branches of government. Members of the public may participate in meetings and considerations on special projects or requests, but interviews with staff indicated that this participation is infrequent. A Supreme Court Order issued May 26, 1978 instructed the State Bar to permit public and electronic media representatives to

have input in hearings on a referendum on advertising by attorneys conducted by the State Bar Committee on Advertising.

The General Counsel of the State Bar of Texas states that meetings of the Board of Directors may be held in executive session when matters enumerated in Section 2(a) of the Open Meetings Act are considered.

#### Summary

The State Bar of Texas is not subject to the provisions of the Open Records Act and the Open Meetings Act. Generally, the meetings are limited to six or seven meetings per year, with regular monthly meetings of the State Bar Executive Committee and the members of the Supreme Court.

### Criterion 11

The impact in terms of federal intervention or loss of federal funds if the agency is abolished.

The regulation of the practice of law, with the exception of practice before federal courts, is a task which the federal government has left to the states to perform. No federal standards govern the regulatory activities of the State Bar of Texas. Consequently, no federal intervention would be anticipated to result from the abolition of the State Bar. The State Bar presently administers federal grants totaling approximately \$1,200,000 at the request of the Governor's Office. Were the State Bar to be abolished alternative methods for administering the grant programs would be required.



## CONCLUSIONS

The need to regulate the activities and qualifications of attorneys is recognized by all states. Historically, their function has been one of an officer of the court and one which is necessary to set in motion the judicial machinery of the courts. Regulation of attorneys in Texas was instituted in 1846 by requiring licensure of attorneys through the District Court or the Supreme Court. Texas did not choose to regulate all activities of attorneys during this early period and it was not until 1929 that the integration of the Bar began to be actively pursued. At a basic level, the term "integration" is simply the compulsory licensing of a group of individuals. In terms of attorney licensure, the term is more extensive in scope than those normally granted to a state regulatory and licensing agency. Generally, compulsory membership is required in an association which can engage in professional and civic activities which may be contrary to the views and desires of an individual member. Early records of the legislative attempts to provide an integrated bar, indicate that this particular aspect was one of the main points of concern. The other point involved who would control the discipline process if one were implemented that was administrative in nature. This point continued to surface as regulation through an integrated bar was considered and rejected by the legislature in five consecutive sessions, spanning the period of 1929-1937. In 1939, an integrated bar act was finally adopted which provided for compulsory membership through licensure and required the rules governing its operation to be promulgated by the Supreme Court. However, one major concession was made to those opposing the act. Discipline would be applied by local committees and disbarment could only take place through jury trial in the district court in the home county of the defendant.

The rules of conduct required by the State Bar Act consist of articles which govern the operation of the Bar, provide a method of disciplining attorneys,

regulation of unauthorized practice, and a canon of ethics for the guidance of attorneys. All rules and changes thereto must be submitted to a vote of the members. At least 51 percent of the members must vote, with a simple majority of the votes cast necessary for passage.

At the time of adoption, Texas joined 22 other states which had integrated bars. Today 30 states, including Texas, require membership in the State Bar. In 11 of the 30 states, the Bar is responsible for both admission and discipline while in 16 other states both admission and disciplinary functions are performed by officers or committees appointed by the Supreme Court. In states which do not require bar membership in order to practice law, the Bar often acts as a voluntary association although its activities may still be regulated by statute or judicial rule.

Following adoption of the integrated bar in Texas, the professional activities remained limited to the organization and arrangement of annual meetings and support of legislative proposals concerning securities, insurance and public welfare provisions. In 1948, the Bar undertook a systematic program of continuing education for the lawyers of Texas. The programs were undertaken to achieve the stated objectives of the advancement of the administration of justice and the science of jurisprudence; the encouragement of cordial intercourse among its members; the improvement of relations between the Bench and the Bar and the public; and the protection of the professional interests of the members of the State Bar, have substantially increased over time.

The administration and direction of these programs and activities are vested in a 30-member board of directors elected from 17 geographical districts. The Board of Directors is assisted by a staff composed currently of more than 100 full and part-time employees under the administrative direction of an executive director who serves at the pleasure of the board. Funds for support of the Bar's

activities are derived from membership fees, grants, gifts, and donations, all of which are placed in local accounts and are not currently subject to appropriation by the legislature. In this regard, the Bar also is not subject to the legislative guidelines concerning uses or audit of funds, open meetings, open records, conflicts of interest or contracting and purchasing procedures required of other state agencies.

Of the array of standard regulatory powers generally exercised by a state licensing agency, the Bar actually exercises only the responsibilities for determining the character of lawyers wishing to be licensed, development of rules, and a limited role in the disciplinary process. The actual work involved in determining fitness of character is largely carried out by local committees as is the bulk of the discipline process.

The bulk of the effort of the Bar is directed to over 20 different programs which include the Texas Lawyers Credit Union, State Bar Book Store, Texlex (a legal research operation), the Client Security Fund, Texas Bar Foundation, Texas Center for the Judiciary, Insurance Trust, Criminal Defense Lawyer project, Texas Legal Protection Plan, Governmental Affairs, and the Center for Correctional Services. Revenues and expenditures for the operation of these programs totaled \$5.2 million and \$4.7 million, respectively, for the fiscal year ending May 31, 1977. It is estimated that by 1982, the annual revenues of the Bar may appropriate \$11 million. The principal funds for the receipt and disbursement of revenues were from the general fund (\$2.5 million), grant funds (\$1.4 million), print shop service fund (\$900,000) and the Texas Law Center Fund (\$3.8 million). It should be noted that the Law Center Fund was established to accumulate the revenues (pledges and rentals) and expenditures and to account for the debt incurred in constructing the Law Center office building held in trust for the State of Texas by the Bar. This

fund will be eliminated when assessments levied against members of the Bar, for the purpose of paying the remaining balance of the debt incurred for construction, are collected.

The review of the Bar's funds management indicates that it generally operates in accordance with standard practices although it can and does deviate from the uses of state funds required of state agencies which are under the legislative appropriation process. Areas in which the Bar does not use standard practices deal with purchasing and leasing of supplies and equipment. These areas and others noted would be corrected for the most part if the agency's funds were subject to the usual restrictions contained in the General Appropriations Act.

As stated previously, the Bar performs only two functions which are typical of the customary regulatory agency. These functions are not performed in the customary manner. These functions are enforcement and some aspects relating to licensing. No quantitative data is held by the Bar concerning enforcement that would allow for meaningful analysis. All data of this type, if retained at all, exists with the local grievance committees. Due to the lack of performance data, no assessment can be made of the achievements relating to discipline. This situation will continue as there is no requirement in the law or the Bar's rules which requires regular reporting of data concerning the committee's hearing of grievances. Further, the staff of the Bar has no authority to undertake any type of review of the actual practices that exist within the 40 grievance committees.

While the Bar does not have final authority over the rules under which it operates, it does propose rules for promulgation by the Supreme Court. In reviewing the effects of the current rules, it was noted that several seemed to contain a greater degree of restrictiveness than those used by other states. Texas is the only state in which a referendum of Bar members is required in order to

promulgate or amend a rule regulating the practice of law. Disciplinary rules concerning advertising also appear to restrict the practice of law in a manner inconsistent with the public welfare. Information regarding what lawyers charge is clearly important for private economic decisions by those in need of legal services. Unlimited factual advertising through press or media could reduce the cost of legal services to the consumer. Where harm from certain forms of advertising can be clearly documented, these forms could be prohibited rather than a complete ban on advertising.

Rules concerning grievance procedures appear to provide artificial barriers to full public scrutiny in that all proceedings of the committees are closed to the public. No public members are appointed to the committees in Texas although approximately 20 other states use this avenue for public participation. The local grievance committee system of lawyer discipline used in Texas is unique among the states. No other state relies so extensively on volunteer participation. Grievance procedures in all other states have been centralized in order to remove local bias and to provide a standard approach which can be reviewed for its consistency of application.

The other major objective of the Bar can generally be stated as advancement of the profession. The bulk of program expenditures are directed toward those activities which have as their purpose the advancement of the profession, the protection of the interests of its members and in acting in a representative capacity for the profession. Other agencies reviewed conducted these activities outside the state framework. For example, the medical, real estate and accounting organizations all perform professional activities outside the state framework similar to that of the Bar. Membership in these organizations reflect a high degree of participation on the part of licensees.

Any assessment of the achievements relating to the advancement of the profession are difficult if not impossible to quantify. The difficulty of assessment raises serious questions as to the appropriateness of utilizing the authority of the state for the purposes of their support. While size and diversity may be considered a measure with which to gauge effort, it is no substitute for quantifiable goals and objectives. The most appropriate measure may be in usage determined by the voluntary participation of those wishing to avail themselves of the services offered.

If the legislature determines that the regulation of attorneys should be continued, certain changes in the organization and operation of the State Bar should be considered as a means of increasing the effectiveness and efficiency of the regulatory activity:

**THE LEGISLATURE SHOULD CONSIDER SEPARATING THE REGULATORY FUNCTIONS PERFORMED BY THE STATE BAR FROM THE PROFESSIONAL SERVICES PROVIDED LAWYER MEMBERS.**

Currently, the major portion of the State Bar's efforts and resources go to areas other than those concerned with the regulation of attorneys. Other groups which are licensed, in particular the areas of medicine and accounting, maintain active professional associations which include the majority of the licensees who participate on a voluntary basis. The services offered to members, including continuing education, would appear to be of the type that should best be rendered on a voluntary basis, with the main test being the usage of those wishing to avail themselves of the services offered. Other services such as opposition or support of legislation can best be done on a voluntary basis where the views of the membership can be clearly reflected.

After nearly 30 years of development, it would seem strange that the lawyers of the state would not have developed a sense of purpose that is central to the maintenance of a healthy vigorous voluntary professional association.

The present structure of the organization could be maintained if the association became voluntary as an aid to the Supreme Court in drawing upon the membership for appointments in the area of regulatory functions.

ALL FUNCTIONS PERTAINING TO THE REGULATION OF ATTORNEYS -- EXAMINATION, LICENSING AND ENFORCEMENT SHOULD BE PERFORMED UNDER DIRECT SUPERVISION OF THE SUPREME COURT BY AN ADMINISTRATIVE AGENCY RECEIVING FUNDS APPROPRIATED BY THE LEGISLATURE AND MAINTAINED IN THE STATE TREASURY.

The current system for regulation of attorneys is fragmented between the Board of Law Examiners, the State Bar and the local bar districts. Texas appears unique in the use of decentralized processes which may appear to the public to negate any real intent for regulation. The combination of this function under the Supreme Court can streamline the current process and provide a vehicle that appears designed for regulation. In suggesting this approach, the power of the Supreme Court over the admission of attorneys to the practice of law and their subsequent discipline would not be negated nor is the approach intended to do so. The approach does, however, provide the court with a workable framework through which it can determine that its power over those admitted to practice before the courts is being properly executed and applied. The source of funding for this operation should be license fees and other revenues made available through the appropriation process. Inclusion within this process will not be a hinderance, but should provide reasonable guideline for the use of the fees exacted through the power of the state.

THE DISCIPLINARY FUNCTIONS OF THE LOCAL GRIEVANCE COMMITTEES SHOULD BE TRANSFERRED TO A CENTRAL DISCIPLINARY COMMITTEE APPOINTED BY THE SUPREME COURT, WITH NECESSARY SUPPORT STAFF BEING SUPPLIED BY THE ADMINISTRATIVE UNIT RESPONSIBLE FOR THE REGULATORY FUNCTION OF ENFORCEMENT. PUBLIC MEMBERSHIP SHOULD BE INCLUDED ON THE CENTRAL DISCIPLINARY COMMITTEE AND MEETINGS OF THE COMMITTEE SHOULD BE OPEN TO THE PUBLIC.

The discipline of lawyers by volunteer local grievance committees is subject to numerous criticisms. Grievance procedures have been centralized in all states except Texas and Connecticut in order to remove local bias from the disciplinary process. The absence of standard investigation procedures and reliance on volunteers may result in a lack of uniformity in the discipline imposed on lawyers. Other criticisms of volunteer local grievance committees which have been cited by the American Bar Association include an inability to conduct intensive investigations, in adequate record-keeping and delays in the disposition of complaints. The American Bar Association has recommended that paid professional staff be employed to investigate disciplinary matters. In many states this staff is funded through the



payment of a nominal fee by Bar members.

Approximately 20 states provide for public participation in the disciplinary process through the requirement that disciplinary committees possess lay members. By opening the meetings of the central disciplinary committee to the public, the public is assured that complaints are handled in an impartial and uniform manner.

THE ADMINISTRATIVE UNIT CHARGED WITH REGULATION FUNCTIONS SHOULD MAINTAIN A PERMANENT CENTRAL FILE FOR THE RECORDING OF COMPLAINTS RECEIVED FROM THE PUBLIC AND SHOULD DEVISE STANDARD RULES TO BE APPROVED BY THE SUPREME COURT FOR THE RECEIPT AND DISPOSITION OF COMPLAINTS BY THE PUBLIC. ALL SUCH DOCUMENTS SHOULD BE OPEN TO THE PUBLIC.

A central complaint file provides the regulatory agency with: 1) a means of assessing the effectiveness of its regulatory activities on a state-wide basis; and 2) the capability of identifying significant patterns in disciplinary matters. A central complaint file insures that all complaints are recorded, and the promulgation of standard rules may provide for the uniform, systematic disposition of complaints. A central complaint file is a valuable resource to members of the public who wish to obtain information regarding the professional conduct of lawyers and should be open to public inspection.

STATUTES AND RULES SHOULD BE MODIFIED TO REQUIRE: 1) THAT FORMAL DISCIPLINARY ACTION BE RECOMMENDED TO THE SUPREME COURT FOR DISPOSAL WITHOUT THE REQUIREMENT OF A JURY TRIAL; AND 2) SANCTIONS LESS THAN DISBARMENT BE IMPOSED WITHOUT ACCEPTANCE OF THE ATTORNEY BEING COMPLAINED AGAINST.

Texas is presently the only state in which all formal disciplinary proceedings are tried by jury. In all other states an attorney is disciplined by his peers. The American Bar Association has recommended the elimination of jury trials in disciplinary matters. Trial by a lay jury often requires jury members to resolve extremely complex legal issues of which the jury members have little knowledge or experience.

Although all lawyers have the right to seek legal recourse in response to discipline imposed by the State Bar, the requirement of a de novo jury trial prior to the formal disciplining of the attorney appears to be unique, among all regulatory agencies reviewed by the staff, to the State Bar of Texas. All other states process disciplinary actions against lawyers without agreement on the part of the attorney.

THAT RULES GOVERNING THE AREA OF ADVERTISING BE ELIMINATED AND THAT ANY RULES LIMITING THIS ACTIVITY IN THE FUTURE BE BASED ON DOCUMENTED HARM TO THE PUBLIC.

The United States Supreme Court in Bates and O'Steen v. State Bar of Arizona, 433 U.S. 350 (1977) held that limited lawyer advertising has First Amendment protection. Presently the State Bar of Texas is seeking to amend its disciplinary rules to allow lawyers to advertise certain limited information in newspapers. The proposed amendment allows for the publication of some specific information, but restricts the flow of information which the Bar does not consider appropriate or useful. The ban on electronic media advertising is complete.

It would seem more appropriate to allow all advertising within the guidelines set down by the U.S. Supreme Court both through publication and electronic media. Restrictions can be made in cases where demonstrated public harm has occurred.

THE STATE BAR BUILDING SHOULD BE TRANSFERRED TO THE STATE TO BE ADMINISTERED BY THE BOARD OF CONTROL FOR THE USE AND BENEFIT OF THE SUPREME COURT, COURT OF CRIMINAL APPEALS AND ANY OTHER ADMINISTRATIVE UNIT OF THE JUDICIARY.

Currently the State Bar holds the State Bar Building in trust for the State of Texas. There is no compelling reason that this building which is held by a state agency, the State Bar of Texas, and situated on state property should be exempted from the same degree of control exercised over all state buildings by the Board of Control. The building should be devoted to uses of the judicial branch and the administrative units responsible to it.

THE MEMBERS OF COMMITTEES CHARGED WITH POLICY DIRECTION OF THE REGULATORY FUNCTIONS ASSOCIATED WITH ATTORNEYS BE SUBJECT TO THE PROVISIONS OF THE CONFLICT OF INTEREST.

While the judiciary is generally exempted from the provisions of the conflict of interest statutes regarding filing of financial statements or affidavits, there are exceptions currently in the case of judges of the Supreme Court and Court of Criminal Appeals. It would seem appropriate to expand this coverage to other persons in a policy role concerning the regulation of attorneys. If a policy body is appropriated by the Supreme Court to

exercise some administrative responsibility in the area of regulation of attorneys these members should meet the same requirements as the members of the court who are responsible for their appointment.