



MAY 17 2016

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TCDLA founded in 1971

May 13, 2016

Ken Levine

Director, Sunset Advisory Commission

PO Box 13066

Austin, TX 78711

RE: Comment on the State Bar of Texas Staff Report

Dear Mr. Levine:

I am the President of the Texas Criminal Defense Lawyers Association, a statewide organization of over 3,200 attorneys formed to advance the causes of individual rights guaranteed by our Texas and U.S. Constitutions in criminal proceedings. We are an organization whose members include former prosecutors, former judges and former holders of political office.

TCDLA has worked closely with the State Bar over the years at the Capitol and within the Bar itself. Buck Files, an active TCDLA member for years, recently served as State Bar President. Our members have served as directors, as well as on the disciplinary committees and numerous other committees of the Bar. Our members have served on steering committees for Bar publications and continuing legal education. I have served as chair of a grievance committee in Central Texas in the past.

Our concern with the issues raised in the staff report rests with Issues #1 and #2. While we support some of the ideas raised in the issues, specifically requiring the Court to have a standard rulemaking process and ensure stakeholder input, as well as requiring the Bar to develop a process for collecting membership input, we are very concerned about the repeal of the referendum process. We are also concerned about expanding powers of the disciplinary process, particularly with regard to investigative subpoena power without judicial oversight.

TCDLA as an organization has participated in and benefited from the referendum process. This process gives criminal law practitioners (both defense attorneys and prosecutors) a voice in proposed rule changes. We are concerned that vesting authority for future rule changes solely in the Texas Supreme Court, made up of solely civil lawyers, would diminish our voice in the process. We respectfully request that, if the removal of the referendum is inevitable, that lawyers with criminal law practices as well as prosecutors be given a seat at the table when final decisions are being made with regard to rule changes.

TCDLA also is sensitive to the idea of granting subpoena power to the Chief Disciplinary Counsel with regard to lawyers' bank accounts and documents contained within a criminal defendant's file. Though there are well recognized exceptions to privilege in the context



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of disciplinary actions, the notion of a subpoena to an attorney bank account or file notes raises concerns which may be unique to a criminal defense attorney. At the very least, we hope that criminal law attorneys would be part of any process to determine when, and to what extent, the powers of the Chief Disciplinary Counsel should be expanded. This request is also made with regard to any changes in the Disciplinary Rules as we believe criminal law practitioners have a unique and important perspective on many ethical issues which arise in the defense of criminal matters.

We look forward to working with you, the Sunset staff and the Sunset Commissioners throughout this process. Thank you for the opportunity to provide input.

Sincerely,

Samuel E. Bassett
President, Texas Criminal Defense Lawyers Association

cc: Trey Apffel