

TexasBarSunset.com

The Sunset Commission's staff members' analytical report on the State Bar of Texas and its governance of lawyers was drafted by a staff of mostly (if not entirely) nonlawyers. It fails to acknowledge adequately (if at all) that a significant (albeit minor) percentage of clients is conniving and even predatory. Some folks in that very diverse group are their own worst enemies and are not above making contractually prohibited (or otherwise unforeseen) mistakes and then trying to pin the blame on anyone but themselves. Some of them even want to extort free pre-trial favors from their lawyers such as the filing of fraudulent attorney affidavits on their behalf in conflicts unrelated to the one that is already in litigation. Some clients even want to try to steal the (potential or actual) attorneys fees that made an attorney's championing their case possible in the first place. Such predatory, conniving ways appear to abound in a small (but not insignificant) percentage of clients evidently *regardless* of socioeconomic background, gender, ethnicity, age and even military or church-going status. In other words, and at the risk of sounding (unintentionally) excessively politically correct, it is evidently not possible to successfully predict client misbehavior based on the abovementioned characteristics. However, such miscreants should not be able to ruin matters for the majority of clients in Texas, who do indeed seem to be honest and well-worth serving. Who knows better regarding how to anticipate and cope with litigious client misdeeds than actually practicing attorneys though? A conflicted State Bar of Texas? No, for reasons such as those elaborated upon below.

The Sunset Commission's staff members' analytical report on the State Bar of Texas nevertheless advocates having the Texas Legislature:

****strip away Texas attorneys' (self-rule) rights to approve professional disciplinary rules changes through a referendum;**

****require the Texas Bar to substantially explain to unsuccessful grievance filers why their complaints were dismissed;**

****force attorney members to (wastefully) endure grievance mediation procedures, presumably without offering the accused attorney the option to decline such an opportunity and instead require that the disgruntled client pursue litigation which (unlike pursuing a Bar grievance) is actually subject to an oath of factual truthfulness and sanctions for fraudulent and / or frivolous filings;**

****give particularly extortionist and harassing former clients the ability to wield a Bar authority against their estranged attorneys which can even wage the power of subpoena against such lawyers, in order to exacerbate the impact of grievance processes (fraudulently) pursued against such attorneys (and still in factually >unsworn< form, too).**

All of the abovementioned proposed changes should be rejected please, in part to protect the public from a spike in the cost of providing legal services which would

ultimately get passed on to consumers. Meanwhile other reforms that we propose below have peculiarly been all but ignored by the same Sunset Review Commission staff's report. We therefore ask that the Legislature take that mostly if not entirely layperson-authored Sunset report with a mere grain of salt.

In discussing the justifications for rejecting the abovementioned proposals, why not simply require the Bar to solicit adequate feedback from a sufficiently representative sample of Bar members before generating proposed rule changes, so that **referendums** will be less likely to fail in ways resembling how the Bar's most recent referendum did a few years ago? Continuing to require the approval of a majority of Bar members regarding how such members are to be governed can further protect the public from the emergence of rules that are otherwise preferred merely by narrow but influential sections of the legal community such as large law firms that jealously resent the competitive threats posed by presently more nimble & dynamic smaller firms & solo practitioners.

Attorneys uniquely serve a vital role in our governmental system's separation of powers, which helps protect the liberty of Texans from special interests that could otherwise better manipulate and even dominate all of government. No other profession in Texas can say as much about itself. Anyhow it would be contrary to the separation of powers ideal to further shackle attorneys with legislative requirements that the current State Bar of Texas might recommend just so that the Bar can appease special interests while sneakily and parasitically fortifying its already lucrative \$13 million dollar annual Continuing Legal Education (CLE) revenue stream. If anyone doubts that greed is a significant problem within the State Bar of Texas, why not look into how many years it actually took the Texas Bar to *finally* stop pretending not to notice that former Texas Bar membership director **Kathy Holder** had been stealing several hundred thousands of dollars from attorney dues funds over the years, before she was *finally* prosecuted and imprisoned for doing so?

The Sunset Commission report mentions that not that many other U.S. states have attorney member referendums to determine what (if any) special rules govern their profession. It is worth noting that not that many other U.S. states have avoided imposing a state income tax, either. However, Texans admirably want a healthy economy more than an aura of conformity so we lack such a tax. The legal profession plays a unique role in our separation of powers system which benefits Texans. Why risk messing that up by taking away attorney referendum rights?

In moving along, why not simply let attorney / client relations be controlled by independently existing laws of contract, Deceptive Trade Practices Acts (DTPA) and fiduciary duties? Frivolous & fraudulent client grievance allegations could then be sanctioned and otherwise dealt with in ways that are somewhat compensatory to predatorily victimized attorneys. It is well worth noting that the Texas Bar has repeatedly made it abundantly clear that it has no plans to begin requiring an oath of factual truthfulness from grievance-pursuers. Chief Disciplinary Counsel Linda Acevedo claims that that is acceptable because...attorneys have a right to respond to untruthful allegations. She conveniently neglects to admit how the resulting culture of intimidation helps fortify the Bar's CLE sales to justifiably confused attorney members who seek regulatory clarity. Again, the Bar receives over \$13 million annually merely for peddling CLE.

Under the status quo's framework, the abovementioned Sunset reform proposal that the Bar explain to a complaining party why a particular grievance filing did not succeed would lead to the teaching of predatory, conniving clients how to amend and re-file such complaints and thereby further harass their attorneys who annoyed them. Some clients find it annoying when an attorney refuses to file fraudulent affidavits on their behalf against clients' rivals & enemies. Some clients also resent how some attorneys refuse to share their attorney's fees with such disgruntled clients or otherwise engage in other unlawful conduct that some clients predatorily demand after persuading attorneys to invest in their cases. The abovementioned Sunset Commission's staff members' proposals would exacerbate these sorts of problems at the public's expense. Recommendations listed below, on the other hand, would help alleviate them.

Additional issues of concern, and of reform-related interest are as follows:

The Texas Bar still allows for attorney grievance complaints to be filed in unsworn form. If attorney / client disputes are not to be relegated exclusively to the courts system through the laws of contract, fiduciary duties and Deceptive Trade Practices Acts like they probably ought to be, then an oath of **factual truthfulness requirement should finally emerge within the attorney grievance process. Furthermore, the Bar should be willing to pay attorneys for their time squandered in defending against unwarranted allegations made against them in the absence (or even the presence) of such an oath of factual truthfulness. Too many Texas Bar "workers" in the attorney disciplinary division still have way too much time to kill unproductively, since the Bar takes in so much money each year (including \$20+ million annually in mandatory dues payments and another \$13+ million in CLE peddling). How many of the Bar's enforcement actions are actually intended to help society rather than simply enrich the Bar's "workers" by providing them with highly paid make-work activities that ultimately drive up the cost of legal services that the public must endure if they want attorneys' help?

If the attorney disciplinary process is to remain within the Bar instead of merely the courts system, then the burden of proof for affirmatively adjudicating disciplinary infractions should be fortified from the present "preponderance of the evidence" standard to something closer to a "clear and convincing" standard like what's required by Bars reportedly such as **Alaska's. The Bar proudly posts attorney discipline records on its website in lasting ways. This should be done only when clearly justified or else more Texans will have an increasingly difficult time attracting (understandably risk-averse) attorneys to their cases & causes.

****Virginia's** bar model should be under serious consideration by reformers. There the disciplinary authority (which has mandatory membership for practicing attorneys) sells almost **NO Continuing Legal Education (CLE)** that could otherwise corrupt its judgment about how clear, comprehensible & fair the ethics & disciplinary rules actually OUGHT to be. Virginia's mandatory membership bar takes in merely around \$100,000 per year in CLE sales, whereas the Texas Bar takes in over \$13 million annually through CLE-peddling (and at around \$100 per hour). Virginia's Bar has nearly half as many attorney members as Texas does, by the way. Annual Bar dues is less in Virginia than it

is in Texas, too. Does it not represent a conflict of interest for the Texas Bar to profit so much from educating about attorney ethics while simultaneously issuing disciplinary rules and selectively enforcing them, not to mention restricting who can offer competing CLE courses and under which circumstances?

Whichever entity or entities get(s) to approve future CLE eligibility for the state of Texas should NOT simultaneously get to compete against CLE providers. Such a scenario could help avoid some significant **conflicts of interest. Although the State Bar of Texas admonishes its attorney members against conflicts of interest, when it comes to its own conflicts it seems that the applicable motto is “[t]hese rules are for thee, but *not* for me.”

Another source of inquiry: Virginia's Bar does not charge for **advertising reviews. In contrast, the Texas Bar fairly recently *increased* ad review fees from \$75 to \$100. This warrants heavy scrutiny, especially given the purported justification of increased travel expenses for Bar directors. In reality, the internet makes video-conferencing more affordable and effective than ever. Meanwhile even as gasoline has been enduringly cheaper than it has been in quite some time, electric and other alternative fuel vehicles are more economical than ever. The Texas Bar already gets enough money each year, involuntarily paid by its members. It does *not* need to further feed the faces of its directors who seek to wine & dine while pretending to make advances in the field of advertising reviews. Again, attorney / client relations [and relevant advertisements] could be regulated through the courts instead, pursuant to contract, Deceptive Trade Practices Act and fiduciary duty (etc.) laws.

Other current Texas Bar functions should be removed from the bureaucratically ossified Texas Bar authority, and allocated to entities that do NOT mandatorily require membership of dues-paying Texas attorneys. These include the offering of CLE, the publishing of monthly magazines & brochures, and the formation & maintenance of attorney member & public outreach committees and support groups. If attorneys actually want such “services” then they will pay for them. Virginia has a mandatory membership state bar, and also a voluntary one. Why doesn't Texas? Monopolies are tough to compete against, and service to attorney members and also the public is consequently inadequate. By the way, reportedly **there are 33 mandatory state bar associations and 20 voluntary state bars nationwide. The Sunset Commission's report claims that maintaining mandatory membership attorney bar associations is a common practice nationwide, even as 1 out of every 3 U.S. states reportedly lacks a mandatory membership attorneys bar. Finally:

**Legal research services such as Casemaker & Fastcase should remain available to the members of whatever might remain of any >mandatory membership< State Bar of Texas. After all, the comparatively large membership pool can better negotiate discounts so that they can continue to be available to all members.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Rich Robins", written over a horizontal line.

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Houston, Texas**