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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 apparently mostly *nonlawyers*. That might be why it fails to acknowledge adequately (if at all) that a significant (albeit minor) percentage of many attorneys' clients is conniving and even predatory. Some folks in that very diverse group of predatory clientele 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 (i.e. their attorneys). Some such clients even want to extort free pre-trial favors from their lawyers such as the filing of fraudulent attorney affidavits on their behalf in conflicts that are completely unrelated to the one that is already in litigation. Meanwhile 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:

****abolish 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 so that they can refile them;**

****compel attorney members to (often wastefully) endure forced grievance mediation procedures, presumably without offering the accused attorney compensation or 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 as well as perjury; and:**

****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 a *judicially unrestrained* ("fishing expedition") investigative 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 order to protect the public from a spike in the cost of providing legal services which would otherwise ultimately get passed on to consumers. What happens when Texas attorneys fear accepting more clients due to professional licensing concerns? For one thing, more Texans end up taking the law into their own hands while some such Texans consequently wind up in jail, thereby costing taxpayers. Meanwhile more Texan entrepreneurs suffer losses in the absence of an attorney's helping-hand, often resulting in a declining tax base. Making it easier to jeopardize an attorney's license or even merely consume his or her limited time with dubious bar grievance complaints does not yield more benefits than it does burdens for society.

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 please take that apparently mostly layperson-authored Sunset report with a mere grain of salt, for the benefit of Texas.

Anyhow, in discussing the justifications for rejecting the abovementioned proposals from the Sunset Commission's fulltime staff, 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 primarily 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 answer is approximately 7.

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. Texas is unique and used to be its own country, as you know. *Texit* fans can eagerly remind you that Texas might even resume

being independent, too, in light of what is reported at USDebtClock.org. At any rate 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, 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:

First of all, 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 any sort of sworn **oath of factual truthfulness** from grievance-pursuers, unlike bar authorities in some other states such as Alaska. The Texas Bar's Chief Disciplinary Counsel Linda Acevedo has repeatedly said that this is acceptable because...attorneys have a right to respond to untruthful allegations. Curiously enough though, this purported rationale does not seem to acknowledge how the resulting culture of intimidation "coincidentally" helps fortify the Bar's Continuing Legal Education (CLE) sales to justifiably confused attorney members who seek regulatory clarity and the opportunity to be in the Texas Bar's good graces. Did you know that the Texas Bar receives over \$13 million annually (at an average of around \$100 per hour, per course participant) merely for peddling CLE even as many U.S. states' attorney disciplinary organizations sell no, or almost no CLE? In contrast, what compensatory relief do attorney members of the Texas Bar receive after having to squander time & spleen answering fraud-plagued grievance allegations against them which placed their professional licenses in peril? Nothing.

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

***Why does the Texas Bar give even *lying* grievance-filers legal **immunity**, even as attorney regulating authorities in jurisdictions such as New York and Vermont reportedly do not? If a complaining party is so unsure of an assertion or allegation that (s)he might potentially worry that it is false, why should such an accusation nevertheless be so vigorously protected? Who really benefits from such a scenario other than Texas Bar officials whose mercy is sought by consequently stressed, busy attorneys?

**The Texas Bar still allows for attorney grievance complaints to be filed in unsworn and unverified form, unlike attorney licensing authorities such as Alaska's. 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 here in Texas. Furthermore, the Bar should be willing to pay attorneys for their time squandered in defending against unwarranted grievance allegations made against them in the absence (or even in 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 of course the additional \$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?

Is it not time to implement **term limits for attorney disciplinary officials at whatever remains of the Texas Bar, post-Sunset? Term limits even apply to the president of the Texas Bar so why not to attorney disciplinary officials as well? Fatigue and even irritation set in with those who perform any job for too long. “Thuggery” can, too. Worsening matters, the longer an attorney is removed from the realities of practicing law outside of a bar association, the less pragmatically (s)he seems inclined to perceive scrutinized attorney conduct in the outside world. How do these scenarios help attorney accessibility for ordinary Texan laypersons? Meanwhile inflicting what seems like double jeopardy upon attorneys whose conduct can also be scrutinized in our courts system pursuant to contract, fiduciary and Deceptive Trade Practices Acts law does *not* seem like it should be a long term career endeavor. Otherwise there is a perverse incentive to try and create job security regardless of the well-being of the legal profession which attorney disciplinary officials should otherwise seek to help preserve for society’s benefit.

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 is required by legal regulating authorities throughout the USA. **Apparently fewer than one out of every five state attorney disciplinary authorities nationwide applies merely the “preponderance of the evidence” standard in attorney disciplinary matters, and Texas is one of them.** Interaction with officials at the American Bar Association’s Center for Professional Responsibility who are conducting ongoing research into this matter seems to confirm this. At any rate, attorney regulators in states such as California, Arizona, Colorado, Oklahoma, Kansas, Louisiana, Alaska, South Carolina, Georgia and Virginia (for example) reportedly require satisfying a “clear and convincing” burden of proof in order to convict an attorney of professional misconduct. The same is the case in the District of Columbia and the U.S. Virgin Islands. Why is Texas still in the comparatively small minority of states that clings to a mere “preponderance of the evidence” standard even as the Texas Bar purports to represent that attorneys should want

to try harder to make justice accessible to *all* Texans? The contradiction is paradoxical indeed, but conflicts of interest at the Texas Bar seem to help one better understand it.

** The Texas 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. Did you know that the Texas Bar also sells **advertising** on that same website, thereby actually making money from publicly tarnishing attorneys' professional reputations? The Texas Bar reportedly receives hundreds of thousands of dollars per year in advertising sales on **TexasBar.com**. The more some parts of the TexasBar.com website are visited, the higher other parts consequently appear in search engine rankings too. Is this overall situation not a conflict of interest? (As a sidenote, the author of this Sunset submission has *never* been professionally disciplined by any bar association, but he perceives the Texas Bar's regulatory scheme to be counterproductively hazardous for attorneys in ways that are detrimental to society.)

Meanwhile **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.

Additionally the mandatory membership bar in California reportedly takes in less than \$700,000 in CLE revenues annually, and Colorado's reportedly takes in even less. New York's mandatory membership attorney licensing authority does not even sell CLE of its own, and neither does the licensing authority of (for example) Kansas, Arkansas, or Tennessee.

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? Is there not a perverse incentive to keep the disciplinary rule issuance, interpretations and enforcement practices mysterious to attorneys in this CLE-peddling scenario? Does this scenario even withstand the scrutiny of recent antitrust jurisprudence such as the U.S. Supreme Court's **North Carolina State Board of Dental Examiners v. Federal Trade Commission**?

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."

Speaking of revenues, 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. While these include the offering of CLE, they also include 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 is one of several U.S. states that has a mandatory membership state bar, and also a voluntary one. Why is that not the case here in 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 “unified” attorneys bar.**

****Legal research services such as Casemaker & Fastcase should nevertheless continue to be 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. Are any other services provided by the Texas Bar of particular use to attorney members though?**

****Annual voting data tallied by the Texas Bar suggests that the vast majority of members are either indifferent to the Texas Bar, or resigned to being unable to adequately influence it. Over the past decade, there has reportedly never been more than a 29% **voter turnout rate** for annually electing the state bar president. Here are those figures:**

Year	Total Ballots Mailed	Total Ballots Returned
2016	98,692	18,175
2015	97,127	24,347
2014	94,920	20,514
2013(runoff)	92,459	28,019
2013	92,364	25,091
2012	90,300	18,694
2011	88,129	21,210
2010	86,105	19,937

2009	84,022	24,055
2008	81,895	20,075
2007	79,605	17,786

Speaking of votes, how many Texas attorneys who are *not* paid by the Texas Bar actually voted *against* Sunsetting the “unified” Bar out of existence here? The answer is: **0. The Texas Bar never even conducted a Sunset referendum regarding these Sunset Commission proceedings. Apparently all the Texas Bar did to inform members was maintain an obscure Sunset-related web page that almost nobody knows about and that is not prominently linked from elsewhere in its website. The Texas Bar also apparently posted nothing about the pending Sunset review on its official Facebook page, either. Officially posted inanities that nevertheless abound on that official Facebook page help shed some sunlight on the irony of this “informational oversight”. Meanwhile why did the Texas Bar not e-mail or postal mail its members to notify them of the opportunity to make their voices heard through the Sunset process? Should that not be required, along with maybe even a referendum vote of the membership before potentially renewing the Texas Bar's charter? Attorney member referendum rights are in jeopardy and yet the Texas Bar conducted no Sunset-related referendum about them. How is this so-called “self-rule” anything more than “self-enrichment” by Texas Bar insiders? How has the Texas Bar’s “protect the public” mantra become anything more than “protect the gravy train”?

In concluding, I and several of my colleagues would be more than happy to address any questions that you might have.

Respectfully submitted:

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