



May 13, 2016

The Honorable Larry Gonzales, Chair
Texas Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

Re: Comments on the Staff Report on the State Bar of Texas

Dear Chairman Gonzales:

The Texas Family Law Foundation respectfully opposes the recommendation in the Staff Report of the Texas Sunset Advisory Commission to eliminate the attorney referendum process for the adoption of disciplinary rules.

The report's recommendation is based on a comparison to rulemaking in other occupational regulatory agencies headed by gubernatorial appointees confirmed by the Senate. Those boards are, by statute, comprised of a majority of members of the regulated profession. Most importantly, the substantive authority of each agency is statutorily limited, as are the procedures for rule making by those agencies. In the few occupational licensing situations with elected official governance, the Legislature is empowered to restrain those officials because, constitutionally, those state agencies have no inherent power. Whether appointed or elected, the actions of each such board, including its rule making, are subject to judicial review. There would be no judicial review of a Texas Supreme Court rule under the proposal in the Staff Report.

Thus, there is a balance of authority and interests shared by the Executive and Legislative Branches, combined with judicial review, that results in the model on which the other occupational licensing agencies is based.

Simply eliminating the referendum process for rules governing the legal profession would in no way yield that same balance of authority and interests. Current law

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does not allow the legal profession to foist its way onto the public because the Supreme Court of Texas and the Legislature play their governing roles. Nor does current law allow the Supreme Court unfettered power over the profession.

The Staff Report seems to say that a prior referendum *should have* passed and its failure is proof that the current rule making process is defective. But, as the report points out, past referenda *have* passed. Some 90,000 attorneys had the right to vote in the recent referendum. There may have been 90,000 different reasons for rejecting it. The Staff Report briefly characterizes some elements of those proposed rules in a positive light without fully assessing each proposal in detail, including the language of each proposed rule, or addressing the flaws that a majority of those affected --experts all of them--perceived.

No group is more proactive than Texas family lawyers in addressing the pressing needs of the public--our customers. We recognize and constantly adapt to social change more nimbly than any other profession. If there are to be changes in the rule making procedures in the State Bar Act, those changes should hew closely to those recommended in the Bar's Self-Evaluation Report (Pages 285-286). The elected leadership of the State Bar is diversified by every measure by which diversity can be judged and has the technical capabilities needed to decide the many issues that may present themselves for rule making. And, the State Bar Board includes the very active participation of its public members in its decision-making. While Bar leaders are responsive to the profession and the public, they also maintain a strong relationship with and are responsive to the Supreme Court, an appropriate balance of interests and authority.

For these reasons and more, the Texas Family Law Foundation opposes the adoption of the Staff Report that the referendum process in State Bar rulemaking be eliminated in favor of that power being exercised solely by the Supreme Court of Texas. If there is to be change, we recommend the approach taken in the State Bar's Self-Evaluation.

Sincerely,

A handwritten signature in dark ink, appearing to read "JoAl Cannon Sheridan". The signature is fluid and cursive, with the first name "JoAl" being more prominent.

JoAl Cannon Sheridan
President

CC: The Honorable Allan K. DuBois, President State Bar of Texas
The Honorable Frank Stevenson, President-Elect, State Bar of Texas
Mr. Ken Levine, Executive Director, Texas Sunset Advisory Commission
Ms. Katharine Teleki, Project Supervisor, Texas Sunset Advisory Commission