

MAY 16 2016



TEXAS TRIAL LAWYERS ASSOCIATION

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May 12, 2016

Ken Levine  
Director, Sunset Advisory Commission  
PO Box 13066  
Austin, TX 78711

RE: Comment on the State Bar of Texas Sunset Staff Report

Dear Mr. Levine:

Thank you for the opportunity to provide input on the Sunset Staff Report on the State Bar of Texas. The Texas Trial Lawyers Association (TTLA) is a statewide trade association of over 2,400 attorneys formed to advance the causes of those who are damaged in person or property and to resist the constant efforts to curtail the rights of such people. We are an organization of plaintiffs' attorneys, but are committed to the balanced and impartial administration of justice and seek to ensure that the judicial system produces results that are fair to all parties.

TTLA has worked closely with the State Bar over the years, both at the Capitol and within the Bar itself. Our members have served as presidents of the bar, as directors, 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 seminars. They have written papers and made presentations in conjunction with those efforts. We believe strongly that the Bar should be active and vigilant in its governance, and our TTLA members remain committed to that mission. To that end we support the continuation of the Bar as proposed in staff Issue #4.

Our concern with the issues raised in the staff report rests solely with Issue #1 and the repeal of the referendum process. While we support some of the ideas raised in the issue, 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 proposal to repeal the referendum.

The staff report concludes that the referendum process is inefficient because only two out of five rule changes have passed by referendum in the past 25 years. We consider that conclusion to be erroneous or, at best, assumed rather than demonstrated. Borrowing the same premise, an equally likely culprit for the paucity of rule changes has been the failure to adequately consider stakeholder input from the outset. The failure of the last proposal could be attributed to that deficit, rather than to simply a blanket rejection by the membership to further disciplinary rules.

TTLA as an organization has participated in and benefited from the referendum process. One of the recent referenda which passed was a proposal to change referral fees and lawyer advertising – two areas which affect our members and their practices more than other segments of the Bar. We had strong objections to the first proposed changes and provided extensive and widespread public input from our membership to the Bar and to the Court. We worked with them to develop a better approach, which took into account the complexities of our members' practices. Ultimately, the referendum passed.

The staff report notes that the State Bar is a unique agency in Texas, and follows an accepted national structure for the regulation of attorneys. Given this uniqueness, it stands to reason that some aspects of the agency may be different, but not seriously broken. We contend that the referendum process is just such an example. We have worked closely with the Bar on most of the recent referenda and contend that the failure of certain referenda is not a comment on the inefficiency of the vote, but perhaps on the content of the rules changes or on the transparency of the process. Improvements to substance and process can be made without dismantling the referendum altogether.

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,

A handwritten signature in blue ink that reads "Jeffrey Simon". The signature is written in a cursive style with a prominent initial "J".

Jeffrey Simon  
President, Texas Trial Lawyers Association

A handwritten signature in blue ink that reads "Lin McCraw". The signature is written in a cursive style with a prominent initial "L".

Lin McCraw  
President-Elect, Texas Trial Lawyers Association

cc: Allan K. Dubois  
President, State Bar of Texas  
Texas Law Center  
1414 Colorado Street  
Austin, Texas 78701