

# SUNSET ADVISORY COMMISSION

State Bar of Texas



Staff Report  
March 2002

**STATE BAR OF TEXAS**

**SUNSET STAFF REPORT**

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# **SUMMARY**



## Summary

### Sunset Staff Report **State Bar of Texas**

The State Bar is not a typical state agency. As a quasi-governmental agency of the judicial branch, it sets and enforces standards of professional conduct like other regulatory agencies, but the State Bar also functions as a professional association that requires membership of all lawyers licensed to practice law in Texas. Operating in this manner, the Bar has member-elected officers, an extensive committee structure, and the ability of its members to approve rules by referendum. The Bar is also unique in that it exists outside the State's appropriations process, funded primarily by members' dues and program fees. Oversight of the State Bar presents another anomaly since it is shared by both the Supreme Court and the Legislature.

Because of its unique status, the State Bar operates without many of the standard government accountability controls that are required of other state agencies. The Sunset review assessed how the duality of the Bar's roles and its oversight, combined with the absence of accountability controls, affects the Bar's ability to effectively serve the public and its members.

The review found that although the Supreme Court and the Legislature share oversight of the State Bar, insufficient operating controls and a cumbersome governance structure prevent the Bar from achieving maximum results. By developing a long-range strategic plan, considering performance in relation to its budget, and streamlining its own internal oversight capabilities, the State Bar would be able to more effectively identify and serve the needs of the public and its members. Further, these measures would enhance the quality of Supreme Court and legislative oversight, resulting in increased accountability to the public and to the members of the Bar.

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*With more efficient  
operations and  
increased  
accountability, the  
State Bar could better  
serve the public and its  
members.*

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Nowhere is this accountability more important than in the Bar's disciplinary system. The Sunset review found this system to be unnecessarily complex and time consuming, and identified opportunities for simplifying it while also making it more responsive to both aggrieved clients and lawyers. The Sunset review also found an opportunity to enhance the Bar's responsiveness to lawyers and the public through the Bar's rulemaking process by eliminating the requirement that at least 51 percent of the Bar's

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membership vote in a referendum considering proposed rule changes.

Specific recommendations resulting from this analysis are summarized in the following material.

## **Issues / Recommendations** \_\_\_\_\_

### **Issue 1 While the State Bar Should Be Continued, Its Uniqueness Makes It Susceptible to Problems With Oversight and Accountability.**

#### **Key Recommendations**

- Continue the State Bar for 12 years.
- Require the State Bar to develop a strategic plan that includes goals and a performance measurement system.
- Require the State Bar to adopt a performance-based form of budgeting, subject to Supreme Court Approval.

### **Issue 2 The State Bar's Committee Structure Is Unnecessarily Complicated to Serve the Bar's Needs.**

#### **Key Recommendations**

- Place the Executive Committee in statute and clarify its authority regarding the State Bar's committee structure.
- Require the Bar to develop reporting requirements for its standing and special committees.
- The State Bar's Board of Directors should decrease the number of Board committees.

### **Issue 3 The Current Grievance System Is Unnecessarily Complex, Lacks Consistency, and Lengthens Resolution Time.**

#### **Key Recommendations**

- Establish a framework for the State Bar's grievance process in statute that includes a process for referring dismissals for alternative resolution, reducing the number of hearings, and eliminating the option for district court trial.
- The State Bar should devise specific guidelines for awarding attorney's fees.

#### **Issue 4 The State Bar Does Not Maximize Services Offered Through Its Client-Attorney Assistance Program (CAAP).**

##### **Key Recommendations**

- Directly link CAAP with the disciplinary system and require coordination with other State Bar programs.
- The State Bar should institute clearly defined goals and outcome measures for CAAP to track its performance and effect on the grievance system.
- The State Bar should increase attorney and public awareness of CAAP by expanding program outreach and accessibility.

#### **Issue 5 Requiring 51 Percent of State Bar Members to Vote in a Referendum Prevents Needed Changes to Rules and Ignores the Clear Majority in an Election.**

##### **Key Recommendations**

- Repeal the statutory 51 percent member participation requirement in Bar referenda.
- Clarify that the Supreme Court has authority to promulgate rules without the approval of the State Bar membership.
- Authorize the State Bar to administer referenda electronically.
- The State Bar should track all costs associated with administering referenda.

#### **Fiscal Implication Summary \_\_\_\_\_**

Since the State Bar does not receive General Revenue appropriations, recommendations offered in this report would have no fiscal impact to the State. Some recommendations offered in Issues 1, 2, and 5 would result in savings to the State Bar. However, these could not be estimated for this report. Specific fiscal impact to the Bar in the remaining issues are summarized below.

- *Issue 3* – Recommendations would generate savings from the elimination of unnecessary disciplinary hearings totaling \$600,800 annually. Reduced revenue may result from the standardization of attorney's fees, but this could not be estimated for this report.
- *Issue 4* – The requirement for all client-driven complaints dismissed in the grievance system to be referred to the Client-Attorney Assistance program would result in an increase in program costs of \$365,650 annually.





## **ISSUES / RECOMMENDATIONS**

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# Issue 1

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## While the State Bar Should Be Continued, Its Uniqueness Makes It Susceptible to Problems With Oversight and Accountability.

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### Summary

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#### Key Recommendations

- Continue the State Bar for 12 years.
- Require the State Bar to develop a strategic plan that includes goals and a performance measurement system; and adopt a performance-based form of budgeting, subject to Supreme Court approval.

#### Key Findings

- The State Bar is a quasi-governmental agency subject to dual oversight by the Supreme Court and the Legislature.
- Texas has a continuing need to maintain the State Bar.
- Despite dual oversight by the Supreme Court and the Legislature, the State Bar lacks sufficient accountability to the public.
- The State Bar has difficulty focusing on core functions.

#### Conclusion

The State Bar functions as both a professional association and a regulatory agency, with required membership of all lawyers in Texas. As with many other unified bars, the Supreme Court and the Legislature share oversight. This unique arrangement has allowed the Bar to operate without many of the standard government accountability mechanisms that are required of other state agencies. Sunset staff concluded that the absence of these mechanisms contributes to the Bar's inability to focus on core functions and resolve internal inefficiencies.

Standard state agency oversight controls, such as strategic planning and performance budgeting, serve as tools to increase program effectiveness and ensure public accountability. These recommendations seek to provide the Bar and Supreme Court with these tools to improve oversight and management. Specifically, strategic planning would enable the Bar to concentrate on its core functions and maximize its resources. Rather than administering various isolated programs and functions, the Bar would be able to coordinate programs to achieve broader goals. Additionally, a long range planning instrument would help achieve some continuity within the Bar's inordinately large, and changing leadership structure. Performance reporting and implementing a performance-based budgeting process would further assist the Bar in being responsive to its members and the public.

## Support

### The State Bar is a quasi-governmental agency subject to dual oversight by the Supreme Court and the Legislature.

*The State Bar operates as both a regulatory agency and a professional association.*

- The State Bar of Texas operates as both a regulatory agency and a professional association and as such, has many unique features. For example, the Bar has an extremely large board and committee structure that enables it to take advantage of an extensive network of volunteers in developing and implementing policies and programs. As a unified bar, it requires all persons practicing law in the state to be members of the organization. Other unique features include member-elected officers, rule approval by referendum of its members, and a number of member services intended to promote the legal profession and to improve the professionalism of practitioners.
- Both the Supreme Court and the Legislature share oversight of the State Bar. The Supreme Court exercises primary oversight, approving annual budgets, promulgating the agency’s rules, and appointing public members to the Board. The Legislature exercises oversight through the enactment of the State Bar Act, which provides a general framework for overseeing the agency, including the Sunset review process that takes place every twelve years. The Sunset process provides a comprehensive review of the State Bar and has resulted in significant revisions to the State Bar’s structure and operations. Some of these revisions, adopted by the 72nd Legislature, are summarized in the textbox, *1991 Sunset Provisions*.<sup>1</sup>
- As a judicial branch agency not funded by the State, the Bar is exempt from many standard state agency requirements. The table, *State Bar Exemptions*, describes these. In addition, the State Bar is not subject to standard state agency restrictions such as rules regarding travel reimbursements and purchasing from historically underutilized businesses.

*The State Bar is not funded by the State, and is exempt from many state agency requirements.*

#### 1991 Sunset Provisions

- Separated the State Bar’s disciplinary functions from its professional association functions and established the Commission for Lawyer Discipline in statute to oversee the Bar’s disciplinary system.
- Required the State Bar to develop minimum standards and procedures for the grievance system and increase client awareness of the grievance process.
- Required the State Bar to develop a voluntary mediation and dispute resolution procedure to address attorney-client problems outside the scope of the grievance process.

<b>State Bar Exemptions</b>	
Appropriations	The State Bar does not receive state appropriations.
Reporting	The State Bar is not subject to legislative appropriations, so it is not required to comply with budget and performance reporting requirements by the Governor, the Legislative Budget Board, or the Comptroller's Office. However, the State Bar is required to file an annual report with the Supreme Court, the Governor, the Lieutenant Governor, and the Speaker of the House which provides an accounting of all funds received and disbursed. <sup>2</sup>
Strategic Planning	The State Bar is exempt from statutes requiring state agencies to develop strategic plans, though it does have a broad strategic planning effort through a Board committee. <sup>3</sup>
Audit	The State Bar's financial transactions are statutorily subject to audit by the State Auditor. <sup>4</sup> However, the Bar relies on a private firm to perform annual audits.
Rulemaking	The State Bar does not have rulemaking authority. However, its members are allowed to vote on proposed rules before the Supreme Court promulgates them. The Court is exempt from the Administrative Procedure Act which provides specific rulemaking procedures. <sup>5</sup> As a result, the rules affecting the State Bar are not published in the Texas Register and are not accompanied by fiscal assessments.

### **Texas has a continuing need to maintain the State Bar.**

- The State has a fundamental interest in regulating lawyers as officers of the court. While the Supreme Court has the ultimate authority for this regulation under its inherent power to regulate the practice of law, in Texas this oversight authority is shared by the Supreme Court and the Legislature. The Court is equipped to regulate the legal profession and set and enforce standards of conduct, while the Legislature provides independent oversight and promotes public accountability.

Past Sunset reviews of the State Bar have questioned this arrangement, noting the Supreme Court's demonstrated ability to regulate the practice of law, unfettered by, and, in fact, superior to, any legislative involvement. In both instances, however, the Legislature reaffirmed its desire to continue this dual oversight by reauthorizing the State Bar Act. Continuing this dual oversight would maintain the expertise of the Supreme Court in regulating the legal profession while also providing some accountability to the public through the legislative process.

*Past Sunset reviews have questioned the need for dual oversight of the State Bar.*

- The State Bar combines regulatory requirements, such as its disciplinary process, with professional association functions, such as its professional development programs. As a unified bar, it also requires all lawyers to support its programs through their dues and fees, outside the State's budget process.

Past Sunset reviews recognized this uniqueness of having a state-sanctioned professional association, recommending the separation of the function that *promotes* the practice of law from the Bar's regulatory function that *controls* the practice of law. The Legislature, however, has not agreed with these recommendations. Continuing the State Bar with its unified structure would enable it to take advantage of the expertise of volunteers in promoting and enforcing the ethical and professional standards of the Bar, at no cost to the State.

*Bar programs lack clearly articulated goals and performance measures.*

**Despite dual oversight by the Supreme Court and the Legislature, the State Bar lacks sufficient accountability to the public.**

- Although the State Bar is subject to dual oversight, its unique situation as a quasi-governmental agency of the judicial branch makes it less accountable to state authorities and to the public. Not subject to strategic planning requirements, Bar programs lack clearly articulated goals and performance measures. The Bar only measures workload activities like the number of phone calls received or the number of applications or grievances processed, which do not reveal how well the Bar is achieving any desired result. For example, although the Professionalism Enhancement Program (PEP) counts the number of lawyers it counsels, the Bar does not know how effective the program is and does not consider the program's relation to the grievance system or to other programs. Instead, the Bar must rely on staff who "have a good idea of how things are going."<sup>6</sup>

Similarly, although a majority of grievances stem from poor client-attorney communication, Bar staff could not estimate what effect, if any, the Law Office Management Program—which focuses on improving communication and management skills—has had on reducing the number or types of grievances filed.<sup>7</sup> The Client-Attorney Assistance Program also lacks clear goals and performance measures and is discussed in greater detail in Issue 4.

*The State Bar differs from other agencies in budget development, implementation, and oversight.*

- Not subject to the state appropriations process, the State Bar differs from other agencies in budget development, implementation, and oversight. The table, *Budget Process Comparison*, summarizes some of the major differences.

A fundamental difference is the Bar’s use of zero-based budgeting. Zero-based budgeting requires departments and programs to start from zero and justify all expenditures for the period. The process requires extensive planning, defined goals and objectives, and use of performance measures. However, the Bar does not meet these requirements consistently. The Bar’s performance measures are not linked to specific goals and are not linked to spending. Without a link between performance and goals, the Bar cannot assess its effectiveness. And, without a link between performance and spending, the Bar risks wasting money and resources on ineffective programs that do not further its goals.

<b>Budget Process Comparison</b>		
	<b>Other State Agencies</b>	<b>State Bar</b>
Period of Budget	Two years	One year
Responsible Parties	Agency staff, Legislative Budget Board, and Governor’s office	Agency staff, Internal Budget Committee chaired by President-Elect, and Supreme Court
Process	Performance-Based Budgeting	Zero-Based Budgeting
Public Participation	Legislative Committee Hearings	Published in the <i>Texas Bar Journal</i> , and public hearing
Final Approval	Legislature, Governor	Supreme Court, line item consideration
Ongoing Oversight	Internal auditing, Legislative Budget Board, Governor’s Office, and State Auditor	Internal Audit & Finance Committee, privately contracted auditing firm, and Supreme Court

In contrast to the Bar’s cost-concerned zero-based budgeting system, the State uses a customer-focused, results-oriented system called performance-based budgeting. Texas, one of the pioneer states in performance-based budgeting, has considered performance measures in relation to budget decisions for more than 25 years.<sup>8</sup> Unlike zero-based budgeting, performance-based budgeting goes beyond cost centers and considers how services benefit the public. The focus is on outcomes.

Additionally, this budgeting system emphasizes public reporting, participation, and accountability. In practice, the Bar’s process is only an internal exercise with limited outside involvement. A Board committee, led by the President-Elect and supported by staff, develops the budget for Board and Supreme Court approval. The Bar is required by law to hold a public hearing, but these are not well attended. In fact, Bar staff could not verify how many, if any, members of the public attend hearings.

**Texas Performance-Based Budgeting**

Since 1974, Texas has considered performance in relation to budget allocations. In 1991, with legislation requiring agencies to develop strategic plans, the State increased its emphasis on performance measures and adopted performance-based budgeting.

By emphasizing performance and monitoring, and linking these to resource decisions, this budgeting system allows decisionmakers to better forecast outcomes, identify problems, and respond as needed. It also serves as a goal-oriented and customer-focused management tool, that ensures maximum public accountability.

- As a member and volunteer-driven organization, the State Bar relies heavily on staff. To encourage member participation, the Bar limits its 46-member Board to just one three-year term. Thousands of members of the Bar also participate on various Bar committees, many of which oversee key programs. This continuous influx of new people in “oversight” positions creates a heavy reliance on staff.

Committee members often accept staff recommendations without question. For example, when staff requests a fee increase, committee members generally consider the size of the increase and its impact on the Bar, but they cannot assess whether greater program efficiencies would eliminate the need for increased revenue, or whether the fee increase will help the Bar better achieve its goals.<sup>9</sup> This readiness to approve staff recommendations extends to the full Board as well. The Board seldom engages in lengthy debates or discussions on proposed decisions affecting Bar operations.

**The State Bar has difficulty focusing on core functions.**

- The State Bar has difficulty with long-range planning. Although the State Bar has a Board committee dedicated to strategic planning, the Bar has had limited success in adopting and implementing plans. The Bar has implemented some recommendations, such as developing a law office management program, but in most instances, the plans were vague with intangible goals.<sup>10</sup> In the past, at least three plans were developed at irregular intervals through isolated and original efforts.

Unlike previous efforts, the Bar's current strategic planning effort has attempted to build on previous plans and focus on more feasible objectives. Additionally, the current strategic planning committee acknowledges the need for an operating plan and for accountability in implementing it. However, this effort is not required and is more the reflection of a select group of individuals than an institutional obligation. Without more of an institutional basis behind this effort, this strategic plan may suffer the same result as its predecessors.

- The Bar's governance structure makes it difficult for the Bar to focus on core functions. Short Board member terms allow for maximum participation, but constant turnover within the Board hinders continuity. Each year the Bar leadership launches new projects and shifts the Bar's focus. Past presidents and chairs have directed focus on areas such as continuing legal education, technological improvements, the Internet, and public affairs. Long term efforts, such as strategic planning, fail to maintain the ongoing interest and support necessary to be successful, and fail to link to broader goals of the Bar's diverse programs.

The Bar's committee structure also contributes to the Bar's difficulty focusing on core functions. As discussed in Issue 2 of this report, the State Bar has 59 various committees ranging in topic from technology oversight to history and traditions, and from judiciary relations to legal assistants. These are just a sample of the many Bar committees that do not directly support the Bar's principal mission and functions.

*The Bar's current strategic planning effort acknowledges the need for increased accountability.*

*Many of the Bar's 59 committees do not directly support the Bar's principal mission and functions.*



- In the absence of effective long-range planning and focused attention on core functions, the Bar fails to prioritize its key services. For example, an internal Bar survey found low member awareness of the Client-Attorney Assistance Program, the Client Security Fund, the Professionalism Enhancement Program, and Texas Lawyers Care.<sup>11</sup> In fact, some of these programs are not even included on the Bar's Web site. These programs represent key assistance services that can address grievance problems and enhance confidence in the legal system. However, the Bar does not adequately promote them.

## Recommendation

### Change in Statute

#### 1.1 Continue the State Bar for 12 years.

#### 1.2 Require the State Bar to develop a strategic plan that includes goals and a performance measurement system.

Similar to executive branch state agencies, the State Bar should develop a formal strategic plan each even-numbered year covering a period of five years, beginning with the next odd-numbered year. The plan should include a system for measuring performance, concentrating on results and outcomes of Bar operations and services. While not a requirement of this recommendation, the State Bar could consult with the Legislative Budget Board or the Governor's Office of Budget and Planning for assistance in developing the plan and measuring performance. Measures should relate directly to goals and should be limited to the most important indicators of performance. The Bar should annually report its performance measures to the Supreme Court and in the *Texas Bar Journal*, to inform Bar members. Additionally, in the course of evaluating the Bar, the Supreme Court and the Sunset Commission should consider the Bar's compliance with its strategic plan and the effectiveness of its performance measures.

#### 1.3 Require the State Bar to adopt a performance-based form of budgeting, subject to Supreme Court approval.

This recommendation would require the State Bar to do more comprehensive, long-range planning in conjunction with its budgeting effort. The Bar and the Supreme Court should develop measurable goals and consider performance in the development and approval of the Bar's annual budget. As illustrated in the chart, *Strategic Planning and Performance-Based Budgeting*, a performance-based budgeting system incorporates strategic planning, budget development and implementation, and performance monitoring. In



Source: State Auditor's Office, *Guide to Performance Measure Management*

developing the budget, the Bar must formulate performance targets or goals. After implementation of the budget, the Bar should report on its performance to facilitate the revision of performance projections when needed, and inform the Supreme Court in its decisions.

## Impact

These recommendations seek to increase accountability in the State Bar by providing the Bar, the Supreme Court, and the public with necessary tools for effective oversight. By developing a five-year strategic plan with goals, the Bar would be more focused on its core mission, and better able to maximize its resources and the effectiveness of its programs. The use and reporting of performance measures would ensure that the State Bar is accountable to all those affected by its operations. Linking performance to the budget would also enable the State Bar and the Supreme Court to make better informed management decisions. Ultimately, these recommendations will strengthen the Bar and increase its effectiveness.

## Fiscal Implication

This recommendation would have no fiscal impact to the State. However, the State Bar could potentially see savings from increased efficiencies. Although savings should be achieved throughout the organization, it may be incremental initially and cannot be estimated for this report.

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<sup>1</sup> Sunset Commission, *Analysis of Legislation, 72nd Legislature - 1991*, (Austin, Texas, July 1991), pp. 35-37.

<sup>2</sup> Texas Government Code Ann., ch. 81, sec. 81.023(b).

<sup>3</sup> Texas Government Code, Chapter 2056 requires agencies to develop strategic plans and sec. 2056.001(4) provides for State Bar exception.

<sup>4</sup> Texas Government Code Ann., ch. 321 and ch. 81, sec. 81.023(a).

<sup>5</sup> Texas Government Code Ann., ch. 2002, sec. 2002.001 (3)(C) and ch. 2001, sec. 2001.003 (7)(C).

<sup>6</sup> Interview with Bar staff (Austin, Texas, October 9, 2001); and Interviews with Bar staff and PEP panelists (Fort Worth, Texas, Wednesday, December 18 and 19, 2001).

<sup>7</sup> Interview with Bar staff (Austin, Texas, October 11, 2002); and Interview with LOMP volunteer (Fort Worth, Texas, December 19, 2001).

<sup>8</sup> State Auditor's Office, *Guide to Performance Measure Management 2000 Edition*, SAO No. 00-318, (Austin, Texas, December 1999).

<sup>9</sup> State Bar of Texas Advertising Review Committee meetings (Austin, Texas, February 2 through May 4, 2001); and State Bar of Texas Lawyer Referral Information Service Committee meeting (Austin, Texas, December 14, 2001).

<sup>10</sup> Interviews with Board members (Dallas, Texas, December 20, 2001 and El Paso, Texas, January 24, 2002).

<sup>11</sup> State Bar of Texas, Board Strategic Planning Committee and Member Services Subcommittee, *Member Services Survey* (Austin, Texas, Fall 2001).

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## Issue 2

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### **The State Bar's Committee Structure is Unnecessarily Complicated to Serve the Bar's Needs.**

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## Summary

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### **Key Recommendations**

- Place the Executive Committee in statute and clarify its authority regarding the State Bar's committee structure.
- Require the Bar to develop reporting requirements for its standing and special committees.
- The State Bar's Board of Directors should decrease the number of Board committees.

### **Key Findings**

- The Bar uses committees to carry out its functions.
- The State Bar's committee structure is cumbersome and may impair the Bar's ability to get things done.
- Recent actions by the State Bar demonstrate its understanding of the need to streamline its oversight structure.

### **Conclusion**

The State Bar of Texas is unique in its reliance on a multiplicity of committees, comprised of members of the Board of Directors and volunteer attorneys, to help carry out Bar functions. In all, the State Bar has 59 committees that develop and implement Bar policies. One of these, the Executive Committee, assists the Board in carrying out its responsibilities.

The Sunset review of the State Bar's committee structure assessed whether it is best suited to serving the Bar's need to encourage volunteer participation in its processes, while also providing efficient and effective oversight of the Bar's many activities. The review found that the committee structure is unwieldy, plagued by overlapping responsibilities and rising costs. The Bar would benefit from clarifying the responsibilities of the Executive Committee to assess the need for Bar committees, directing a comprehensive review of standing and special committees on a more frequent basis, developing more meaningful reporting requirements to assess the accomplishments of standing and special committees, and structuring the Board committees around its core functions.

# Support

*The Executive Committee assists the Board with its responsibilities.*

## The State Bar relies on committees to carry out its functions.

- The State Bar is governed by a Board of Directors that develops and implements policies that complement the Bar’s mission. The Board is composed of 46 members provided for in statute, including 30 elected by membership from State Bar districts, three elected by the entire membership, six public members appointed by the Supreme Court, four minority members appointed by the Bar President, and three officers elected by the Texas Young Lawyers Association.<sup>1</sup> In addition, 15 individuals participate in Board meetings but are not considered members and are non-voting. The Board is responsible for the oversight of the State Bar, including the development and implementation of many of the Bar’s regulatory and association functions.

- The Board of the Directors divides its workload among 17 Board committees, as listed in the accompanying textbox. Board committees carry out the functions of the Board and make recommendations for oversight of the Bar’s operations. Most notable of the Board’s committees, the Executive Committee assists the Board with its responsibilities. The Executive Committee is made up of 18 members from the Board and four ex officio members, listed in the textbox, *Executive Committee*. The Executive Committee meets monthly, or as needed, to address issues and perform duties on behalf of the full Board, between its meetings.

Board Committees
• Executive Committee
• Administrative Oversight
• Appeals-Grants Review
• Audit and Finance
• Budget
• Client Security Fund
• Disciplinary/Disability System Oversight
• Facilities and Equipment
• Legal Services
• Legislative Policy
• Minority Representation
• New Directors Orientation
• Nominations and Elections
• Policy Manual
• Professional Development
• Strategic Planning
• Technology Oversight

Executive Committee
• President, President-Elect, and Immediate Past President
• Chair of the Board
• Immediate Past Board Chair
• 7 Elected Members of the Board
• 1 Minority Member
• 1 Public Member
• President, President-Elect, and Immediate Past President of the Texas Young Lawyers Association
<i>Ex Officio</i>
• 1 Supreme Court Liaison
• 3 Ex Officio Staff Members

- To take advantage of the network of attorney volunteers in developing and implementing its policies and programs, the Bar relies on a system of 35 standing and seven special committees, as listed in the textbox, *State Bar Standing and Special Committees*. The Board establishes standing and special committees, usually on the recommendation of the incoming President, who also appoints the committee members. Standing committees are generally created on a permanent basis, focusing on areas such as the Bar’s regulatory functions, court rules, service to the profession, and service to the public.

Special committees are created on a short-term basis to address specific issues, such as pattern jury charges. Committees gather

and analyze information, make recommendations related to programs and policies, and assist in implementing Board decisions. Board members serve as liaisons to the standing and special committees and report back to the full Board on the committees' activities.

- In addition to Board, standing, and special committees, the State Bar has also used at least ten ad hoc committees and task forces to address single issues in the last two years. Most notable among these was its task force to study and make recommendations regarding the unauthorized practice of law. The Bar also has 41 sections, comprised of volunteers who pay dues to support the collaborative study of specialized areas of law or to pursue particular interests related to the law. A list of these sections is provided in Appendix E. Finally, the Bar also has divisions for law students, legal assistants, and legal administrators, comprised of non-lawyers, to enhance professionalism in these areas.

**The State Bar's committee structure is cumbersome and may impair the Bar's ability to get things done.**

- While the committee structure promotes participation from volunteer attorneys, the sheer number of these committees causes a hardship on the Bar to monitor their activities and accomplishments. In all, the State Bar has 59 committees, not including ad hoc committees, task forces, sections, and divisions. By comparison, the Legislature, with its two sets of committees in the Senate and the House, had just 50 committees during the last session to address the range of issues that it confronts in conducting its business.
- A clear distinction between many of the State Bar's committees is hard to make, and the activities and purposes of many of these committees overlap, as shown in the textbox, *Examples of Potential Duplication in State Bar Committees*. This duplication and any waste of time and resources is less of a concern if it only affected the time and efforts of the Bar's volunteers. However, the jumble of committees may actually have a broader impact on the Bar's ability to get things done. To the extent these

**State Bar Standing and Special Committees**

*Standing Committees*

- Administration of Rules of Evidence
- Advertising Review
- Agriculture Law
- Bar Journal Board of Editors
- Child Abuse and Neglect
- Commission for Lawyer Discipline
- Continuing Legal Education
- Council of Chairs
- Court Rules
- Crime Victims
- Death Penalty Litigation
- Disability Issues
- History and Tradition of the Bar and Historical Preservation
- Judiciary Relations
- Jury Service
- Law Focused Education
- Law Office Management
- Laws Relating to Immigration and Nationality
- Lawyer Referral and Information Services
- Lawyers' Assistance Program
- Legal Aspects of the Arts
- Legal Assistants
- Legal Services to the Poor in Civil Matters
- Legal Services to the Poor in Criminal Matters
- Local Bar Services
- Minimum Continuing Legal Education
- Opportunities for Minorities in the Profession
- Professionalism
- Public Affairs
- Real Estate Forms
- Section Coordination
- Section Representatives to the Board
- Texas Disciplinary Rules of Professional Conduct
- Texas Real Estate Broker-Lawyer
- Women in the Profession

*Special Committees*

- Annual Meeting
- Pattern Jury Charges - Business, Consumer, and Employment
- Pattern Jury Charges - Civil
- Pattern Jury Charges - Family
- Pattern Jury Charges - General Negligence & Motor Vehicles
- Pattern Jury Charges - Malpractice, Premises, and Products
- Technology Advisory Committee

*The State Bar's cumbersome committee structure affects its ability to plan and act strategically.*

committees do not work together, the resulting confusion or conflict may slow or even stop the implementation of State Bar initiatives.

This cumbersome committee structure also affects the State Bar's ability to plan and act strategically to meet its goals, especially with regard to the public, as discussed in Issue 1. Ultimately, it may well contribute to a waste of the Bar's resources, both in terms of lost potential from worthy initiatives that get lost in the shuffle, and in terms of the high cost to maintain such a complex oversight structure.

- Budgeting for committees is a growing problem for the Bar. In the past, committees shared from one budget and the Bar based the budget on amounts

from the previous year. The Bar did not seek input from committees on their budgetary needs, but instead tried to estimate the committees' overall needs.<sup>2</sup> In the last two years, the committees' expenses have produced budget deficits, as shown in the table, *State Bar Committees' Budgets*. Overall, committee expenditures grew by 75 percent, or \$185,000. In the last fiscal year, State Bar committees outspent their budget by \$140,000.<sup>3</sup>

State Bar Committees' Budgets			
Fiscal Years	1998-1999	1999-2000	2000-2001
Budgeted	\$348,150	\$287,433	\$293,126
Actual Expenditures	\$248,010	\$334,631	\$433,375
Variance	\$100,140	(\$47,198)	(\$140,249)

*Committee expenditures have increased by 75 percent and have produced deficits in the last two years.*

- The Bar does not have a clearly defined process for monitoring the activities or accomplishments of its committees, and as a result, does not regularly assess the need for committees in helping the Bar meet its goals. The President-Elect implicitly evaluates the need for each committee in filling appointments. However, formal, detailed reviews occur only sporadically. One such review did occur in the 1999-2000 fiscal year, as discussed below, but ongoing review efforts are lacking. Similarly, committee reports on their activities

**Examples of Potential Duplication in State Bar Committees**

- The standing committee on Opportunities for Minorities in the Profession focuses its efforts on minorities and women; even though a separate standing committee, Women in the Profession, also focuses on women.
- The board committee on Technology Oversight and the special committee, Technology Advisory Committee, both advise on implementing technology at the Bar. Despite these two committees, the Board has also set up a Technology Vision Council, as a one time meeting group, to address technology issues.
- Section Representatives to the Board, Section Coordination, and Council of Chairs are separate standing committees. The overall goal of these committees is to foster a relationship with the Board and the agency that addresses the concerns of sections.

and accomplishments are not sufficient to judge the success of their activities, and their role in achieving the objectives of the State Bar.

**Recent actions by the State Bar demonstrate its understanding of the need to streamline its oversight structure.**

- In the 1999-2000 fiscal year, the State Bar formed an Ad Hoc Committee Review Team to assess any overlap between existing committees and determine the viability and continued need for committees. Ultimately, the Bar's Board of Directors adopted the team's recommendations to abolish four committees, but it did not adopt recommendations for actions necessary in creating new committees. These actions include a fiscal impact study, and a review and a poll of committee chairs to determine if the matter is something that an existing committee could do.<sup>4</sup> These proposed actions were similar to the Board's requirements for approving new programs, functions, or projects.
- The Board's current Strategic Planning Committee recognized the high number of Board committees and recommended a decrease from 17 committees to six to correspond with the Bar's core functions.<sup>5</sup> The Committee also recommended that each Board committee set measurable goals and objectives in keeping with the committee's charge, and to better define and report their activities and accomplishments each year. As yet, the Board has not adopted these recommendations.
- Beginning with the fiscal year 2002-2003 budget, each committee will be assigned a specific budget as an effort to better account for committee activities and to emphasize sound management of resources.<sup>6</sup>

*Formal, detailed reviews of committees occur only sporadically.*

*The Bar's Board did not adopt recommendations for limiting the creation of new committees.*

## Recommendation

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### Change in Statute

#### **2.1 Place the Executive Committee in statute and clarify its authority regarding the State Bar's committee structure.**

This recommendation would place the Executive Committee, as it is currently constituted in the State Bar's rules, in statute and clarify its role in helping oversee the activities of the Bar. The composition of the Executive Committee would include the President, President-Elect, and immediate past President of the State Bar; the chairperson of the Board; the President of the Texas Young Lawyers Association; and other members as the Board of Directors may designate. Among its duties, the Executive Committee would approve the creation of any new standing and special committees, upon recommendations by the President-Elect. Before approval, the Executive Committee would require a fiscal impact study; a review to determine if the matter can be undertaken by an existing committee; and a poll of each chair of an existing committee to determine if the undertaking is something an existing committee could do. The Executive Committee would also

oversee or direct a comprehensive review of standing and special committees biennially or as determined by the Executive Committee. The review would examine the continued necessity of each existing committee and determine any overlap of activities among the committees.

## **2.2 Require the Bar to develop reporting requirements for its standing and special committees.**

This recommendation would require the Bar to develop reporting requirements for use by the standing and special committees to reflect the productivity of the committees. These reporting requirements would replace existing requirements in the State Bar Policy Manual. Committees would have to develop goals and objectives reflecting their responsibilities and outline activities to accomplish their objectives. At the end of the Bar's fiscal year, committees would use this information to assess how well they met their objectives and to identify needed changes or adjustments to help them further achieve these goals. In addition, committees should assess how well they stayed within their budget. The committees would submit their findings to the President, incoming President, and the Executive Director.

## **Management Action**

### **2.3 The State Bar's Board of Directors should decrease the number of Board committees.**

The Board should decrease the number of Board committees to correspond with the functions, activities, and entities of the Bar. One recent example the Board should consider was the recommendation of its Strategic Planning Committee to decrease the number of Board committees from 17 to the following six:

- Executive Committee,
- Budget Committee,
- Finance and Administration Committee,
- Member Services and Education Committee,
- Public Services and External Affairs Committee, and
- Discipline and Client-Attorney Assistance Committee.

## **Impact**

The intent of these recommendations is to provide greater cohesion in the oversight structure of the State Bar by more clearly vesting authority in the State Bar's Executive Committee to assess the need for standing and special committees. In addition, the recommendation for standing and special committees to provide more information about their productivity would help make them more accountable for their activities. The information would also be useful for each incoming President to use in deciding whether to continue various standing and special committees. It would also help increase the Bar's awareness of the costs of these committees relative to the benefits they provide. Finally, decreasing the number of Board committees would help better focus the efforts of the Board of Directors in overseeing the activities of the State Bar itself.



## **Fiscal Implication**

This recommendation would have no fiscal impact to the State. Streamlining the structure of the Board's committees and controlling the number and activities of standing and special committees, would result in savings by having fewer, more focused committees. These savings, however, cannot be estimated for this report.

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<sup>1</sup> Texas Government Code Ann., ch. 81, sec. 81.020.

<sup>2</sup> Telephone interview with State Bar of Texas, Governmental Affairs Relations, (Austin, Texas, February 11, 2002).

<sup>3</sup> State Bar of Texas, Finance Division Director, "Volunteer Committee Info," e-mail to Sunset Advisory Commission, February 13, 2002.

<sup>4</sup> State Bar of Texas, Ad Hoc Committee Review Team Report, Fiscal Year 1999-2000.

<sup>5</sup> State Bar of Texas, Strategic Planning Committee, Proposal for Board Implementation of State Bar of Texas Strategic Plan. (Draft: January 4, 2002)

<sup>6</sup> State Bar of Texas, Self-Evaluation Report, submitted to the Sunset Advisory Commission (August 2001). p. 60



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## Issue 3

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### **The Current Grievance System is Unnecessarily Complex, Lacks Consistency, and Lengthens Resolution Time.**

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## Summary

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### **Key Recommendations**

- Establish a framework for the State Bar's grievance system in statute.
- Provide a process for classifying grievances and referring dismissals for alternative resolution.
- Simplify the hearing process by reducing the number of hearings.
- Streamline the process by eliminating the option of district court.
- The State Bar should devise specific guidelines for awarding attorney's fees.

### **Key Findings**

- Complaint classification and lack of administrative dismissal power result in unnecessary hearings.
- The redundancy and complexity of the current system create increase complaint resolution time.
- The application of attorney's fees is arbitrary and inconsistent.
- The State Bar cannot ensure consideration or implementation of needed changes to the grievance system.

### **Conclusion**

Texas attorneys must adhere to the Texas Disciplinary Rules of Professional Conduct. Failure to comply with these rules may result in disciplinary action prescribed in the Texas Rules of Disciplinary Procedure. The grievance process begins when a written statement intending to allege professional misconduct is submitted to the Chief Disciplinary Counsel (CDC). If determined to allege misconduct, the matter may proceed through multiple stages of review. Ultimately, an attorney may face disciplinary sanctions that range from a private reprimand to disbarment. These sanctions often include attorney's fees, which serve to recover CDC costs incurred in disciplinary proceedings.

The State Bar's grievance system is designed to protect the public from attorney misconduct. The Sunset review assessed the effectiveness of the process in serving the public and ensuring fairness by maintaining due process for attorneys. The review found that improving the accountability of the system by providing a framework in statute would help promote its effectiveness in resolving grievance issues. Further, Sunset staff found that streamlining the process would reduce redundancies that serve to delay the resolution of complaints, and that providing a greater level of public assistance would help solve the problems that give rise to grievances.

## Support

### The State Bar enforces rules of professional conduct through a statewide disciplinary system.

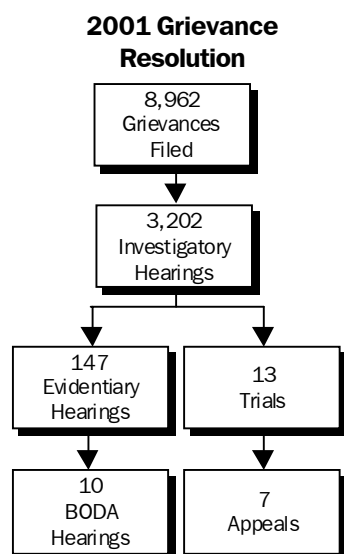
- The State Bar Act assigns jurisdiction over attorney discipline to the Supreme Court and the Commission for Lawyer Discipline, a standing committee of the State Bar. The Commission, created through Sunset legislation in 1991, oversees the administration of the disciplinary system and the State Bar’s Office of the Chief Disciplinary Counsel (CDC). The system is guided by the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure, approved by Bar members and the Supreme Court.

- Within the disciplinary system, a complaint may go through five different stages of review. In the first stage, an individual files a written grievance with the CDC, which classifies it as either a complaint or an inquiry, as defined in the textbox, *Complaint vs. Inquiry*. The CDC generally classifies about two-thirds of all grievances as inquiries, which are then dismissed.

**Complaint vs. Inquiry**

Complaint: written statement which alleges professional misconduct as defined by the disciplinary rules

Inquiry: written statement which does not allege professional misconduct as defined by the disciplinary rules



A grievance classified as a complaint is reviewed in an investigatory hearing before a panel of State Bar Grievance Committee members, to determine if just cause exists to believe that misconduct occurred, and if so, to recommend sanctions. If just cause is found to exist and the matter is not resolved by agreement at the investigatory stage, the attorney can elect the matter be heard de novo before either an evidentiary panel or district court, with the option of a jury. Appeals from evidentiary panels are heard by the Board of Disciplinary Appeals (BODA), and district court appeals are heard in the appropriate courts of appeals. Final appeal for both administrative and court review is vested in the Supreme Court. Activity at these various stages is shown in the chart, *2001 Grievance Resolution*. The chart on page 28 illustrates the complete grievance system.

- Grievance Committee panels may only sanction an attorney by agreement at the investigatory panel stage, the only stage in which the private reprimand is available. In all subsequent stages, available sanctions range from public reprimands to disbarment, and may include payment of restitution and reasonable attorney’s fees.<sup>1</sup> Attorney’s fees are intended to recoup expenses associated with grievance proceedings and are deposited into the State Bar general

fund. The total amount of attorney's fees collected by CDC in 2001 was \$251,766.<sup>2</sup>

**Complaint classification and lack of administrative dismissal power result in unnecessary hearings.**

- The initial classification of a grievance is determined by a CDC investigator. This classification occurs with no administrative oversight; once a grievance is classified as a complaint, rules require an investigatory hearing. Even if the complaint is resolved or later withdrawn, a panel of the grievance committee must convene to dismiss the matter, resulting in wasted time and resources.
- Because the present rules preclude investigation before classification, grievances may be classified as complaints even when the facts of the case, once investigated, clearly do not support a claim of misconduct.<sup>3</sup> Lack of preliminary investigation produces needless hearings, creating unjustified expectations on the part of the complainant. Almost 80 percent of all complaints are dismissed at the investigatory hearing stage.<sup>4</sup> These individuals, believing their problem warrants grievance committee consideration, are likely to perceive the system as biased and become increasingly frustrated upon dismissal. Issue 4 describes a process for referring those dismissed cases to the State Bar's Client-Attorney Assistance Program to solve problems outside the disciplinary system.

*Almost 80 percent of all complaints are dismissed at the investigatory stage.*

**The redundancy and complexity of the current system increase complaint resolution time.**

- Multiple hearings, mostly resulting in identical judgments by similar panels, lengthen resolution time. Local grievance committees comprise both investigatory and evidentiary panels, the former being capable of negotiating an agreed sanction with a respondent, and the latter performing purely an adjudicatory function. While fewer than 5 percent of cases are appealed to the evidentiary level, 80 percent result in findings similar to those in the prior investigatory hearings. This redundancy increases resolution time and contributes to an inefficient system of discipline that frustrates complainants and attorneys.
- The current system provides numerous hearings and election of de novo administrative or court proceedings, resulting in repetitive, non-binding judgments. Attorneys may elect an evidentiary hearing, but if their proposed charges differ from the submission of the evidentiary panel, they may take the matter to district court instead. Texas is the only state in the nation that allows the attorney-respondent the option of a jury trial for disciplinary issues, significantly lengthening resolution time. The average time for resolving a complaint at the evidentiary stage is 664 days, with district court taking even longer.<sup>5</sup>

*Less than 5 percent of cases are appealed to the evidentiary stage.*

**The application of attorney's fees is arbitrary and inconsistent.**

- State Bar rules authorize the use of attorney's fees as sanctions in disciplinary proceedings. Although attorney's fees represent almost two percent of the Bar's revenues in 2001, the CDC has only vague guidelines for seeking fees. These guidelines are not routinely followed and have not been updated since 1996.<sup>6</sup> In addition, the application of fees is inconsistent. In the Fort Worth region, attorney's fees were assessed in 100 percent of its judgments, while only 63 percent of judgments in the Dallas region awarded attorney's fees.<sup>7</sup>

Although intended to defray costs, awards are sometimes based on the attorney-respondent's ability to pay. No guidelines prevent arbitrary awards, and individual amounts vary, ranging from \$200-\$350 per hour.

- The validity of attorney's fees is also questionable. Fees should be based on time CDC staff attorneys spend on each case; however, attorney's fees are being charged when no attorney is involved or before the work is actually performed. For example, fees have been awarded on cases managed and presented to the panel by an investigator, not an attorney. This is especially the case in rural areas, where grievance panels award attorney's fees when no CDC attorney is in the field office.

*Attorney's fees are being charged when no attorney is involved or before any work is performed.*

**The State Bar cannot ensure consideration or implementation of needed changes to the grievance system.**

- The grievance system is subject to multiple sources of oversight: the Supreme Court Grievance Oversight Committee, the Commission for Lawyer Discipline (CLD), and the State Bar Board of Directors' Disciplinary/Disability System Oversight Committee. Recently, the State Bar contracted with a private auditing firm for a full analysis of the grievance system.<sup>8</sup> Additionally, last session, the Legislature required the State Bar to review its disciplinary rules to identify areas of discrepancy with the statute.<sup>9</sup> Although seemingly extensive, this diffuse oversight leaves the potential for problems to go unnoticed and unaddressed.
- Though the State Bar is unique in its dual functions as both a professional association and a regulatory agency, the State Bar and the Supreme Court have recognized the distinction between these functions by completely separating the CDC from other Bar programs. Despite this separation, the Bar's disciplinary system is unique for the level of control exerted over it by the licensed practitioners most affected by it. Basically, change can only occur if the membership agrees. Unlike other regulatory agencies that have enforcement authority in statute, the State Bar's disciplinary system

exists primarily in rule, subject to the approval of the Bar's membership by referendum.

- The nature of the State Bar's rulemaking process does not ensure accountability to the public in the development of the grievance system. Rule changes must be proposed by the State Bar Board of Directors, which is largely elected by the Bar's membership. The Supreme Court provides perspective in its approval of rules before they may be promulgated, but it generally relies on the Bar's leadership and membership to validate the proposals. Without a broader frame of reference, provided by the Legislature in developing a process through the deliberations of passing legislation, the Bar cannot ensure that the grievance system is accountable to the public at large.

*The State Bar's  
disciplinary system exists  
primarily in rule.*

## Recommendation

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### Change in Statute

#### **3.1 Establish a framework for the State Bar's grievance system in statute.**

This recommendation would revise the State Bar's grievance system, as shown in the chart on page 29, and establish the major elements of this system, as described below, in statute. The specific implementation provisions for this process would still be in rules, promulgated by the Supreme Court, after a referendum passed by the members of the State Bar. Each stage of this process would have specific time limits, also determined by rule.

- **Provide a process for classifying grievances and referring dismissals for alternative resolution.**

At intake, an investigator of the CDC would classify the grievance as either a complaint or an inquiry. Client-filed grievances classified as an inquiry would be dismissed and referred to the Client-Attorney Assistance Program (CAAP) to attempt resolution, on a voluntary basis, outside the grievance system. Any confidentiality applied in the grievance system would be extended to CAAP. Additional information about CAAP's role in this process is provided in Issue 4. The complainant would be able to appeal the classification of the grievance as an inquiry to the Board of Disciplinary Appeals, and may amend and resubmit the grievance to the CDC. The respondent would not be able to appeal classification decisions since, unlike the current process, more thorough investigation would occur before a hearing takes place.

- **Simplify the hearings process by reducing the number of hearings.**

Grievances classified as a complaint would be thoroughly investigated by the local CDC to determine if the complaint should be dismissed or if just cause exists to believe that misconduct occurred. This further investigation is designed to ensure that only valid complaints will be set for a full hearing. Administrative dismissal recommendations would dramatically reduce the number of cases currently required to be heard in the investigatory stage.

Recommendations for dismissal and findings of just cause would go to a grievance committee panel in two dockets. The dismissal docket would occur without the attendance of the complainant or attorney-respondent, with the panel considering denying the dismissal and setting the case for a hearing, or approving the dismissal and possibly referring the matter to CAAP. The hearing docket would be for the review of cases found to have just cause to believe misconduct occurred, with the actual hearing conducted as a hybrid, drawing on features of the existing investigatory and evidentiary hearings. The panel hearing would follow formal rules of evidence, similar to a court proceeding. Informal discovery methods would provide all parties with reasonable notice of the charges and evidence while expediting resolution. Subpoena power would remain available to each party. At this stage, the Commission for Lawyer Discipline would act on behalf of the complainant.

The panel may dismiss the matter and refer it to CAAP; find a disability and refer to a district disability committee; or issue sanctions.

- **Streamline the hearings process by eliminating the option of district court.**

Appeals of panel decisions would only be made to the Board of Disciplinary Appeals, eliminating the option of district court. Both the respondent and the Commission for Lawyer Discipline, acting on behalf of the complainant, could appeal the case to BODA, eliminating the complainant's separate right to appeal these decisions. Final decisions by BODA could be appealed to the Supreme Court.

## **Management Action**

### **3.2 The State Bar should devise specific guidelines for awarding attorney's fees.**

The State Bar, with approval of the Supreme Court, should create and implement guidelines for awarding attorney's fees in grievance cases, addressing amount, applicability, validity and documentation. The State Bar should review these fees periodically to ensure adherence and consistency.

## **Impact**

Placing the grievance system in statute will ensure implementation of needed changes, while increasing oversight and accountability. Ultimately, these recommendations serve the interests of attorneys and the public by increasing efficiency and simplifying the grievance system. Allowing administrative dismissals with panel review will maintain public participation recommended by the Sunset Commission in 1991 and reduce the number of unnecessary hearings. This will result in a more efficient system that serves and protects attorneys and complainants.

The revised system has only one hearing, eliminating the option of trial before a district court. This simplified process would significantly reduce complaint processing, ensuring expedient resolution for both the attorney and the complainant. Although the range of sanctions offered in the multiple hearing stages of the Bar's current system differ, reducing the number of hearings should not affect the amount or severity of sanctions issued by grievance panels.

The provision referring complainants and attorneys to CAAP when their case cannot be addressed by the disciplinary system is intended to provide a continuing opportunity to resolve problems rather than simply dismissing the grievance. In addition, due to the reduction in hearings, this provision is



especially necessary as an alternate process for addressing attorney-client problems and preventing future grievances.

Finally, requiring guidelines for attorney's fees will establish consistency and fairness in the assessment of fees as sanctions. Although this may result in less revenue generated from attorney's fees, attorneys will be sanctioned consistently and equitably.

## **Fiscal Implication**

This recommendation would have no fiscal impact to the State, but would result in savings to the State Bar. In 2001, the grievance system dismissed 2,562 cases after an initial hearing. The CDC calculated the average cost per investigatory hearing is \$469. Assuming the recommended changes would decrease the number of cases required to go to a hearing by at least half, this would result in annual savings of \$600,800. Although the enforcement of standardized attorney's fees may result in reduced fee collection, savings from a streamlined process that allows for administrative dismissal of grievances and fewer hearings should far outweigh any reduction to the Bar's general fund.

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<sup>1</sup> Tex. Rules of Disciplinary Procedure 1.06(t)(b), *reprinted in* Tex. Gov't Code Ann., tit. 2, subtit. G app. A (Vernon Supp. 1997) (Texas State Bar R., art. X, § 9).

<sup>2</sup> Memorandum from the Chief Disciplinary Counsel, March 13, 2002.

<sup>3</sup> Tex. Rules of Disciplinary Procedure 2.09, *reprinted in* Tex. Gov't. Code Ann., tit. 2, subtit. G app. A (Vernon Supp. 1997) (Texas State Bar R., art. X, § 9).

<sup>4</sup> Interview with the State Bar of Texas, Dallas CDC Regional Office staff (Dallas, Texas, December 2001).

<sup>5</sup> State Bar of Texas, *Self-Evaluation Report*, submitted to the Sunset Advisory Commission (August 2001). p. 101.

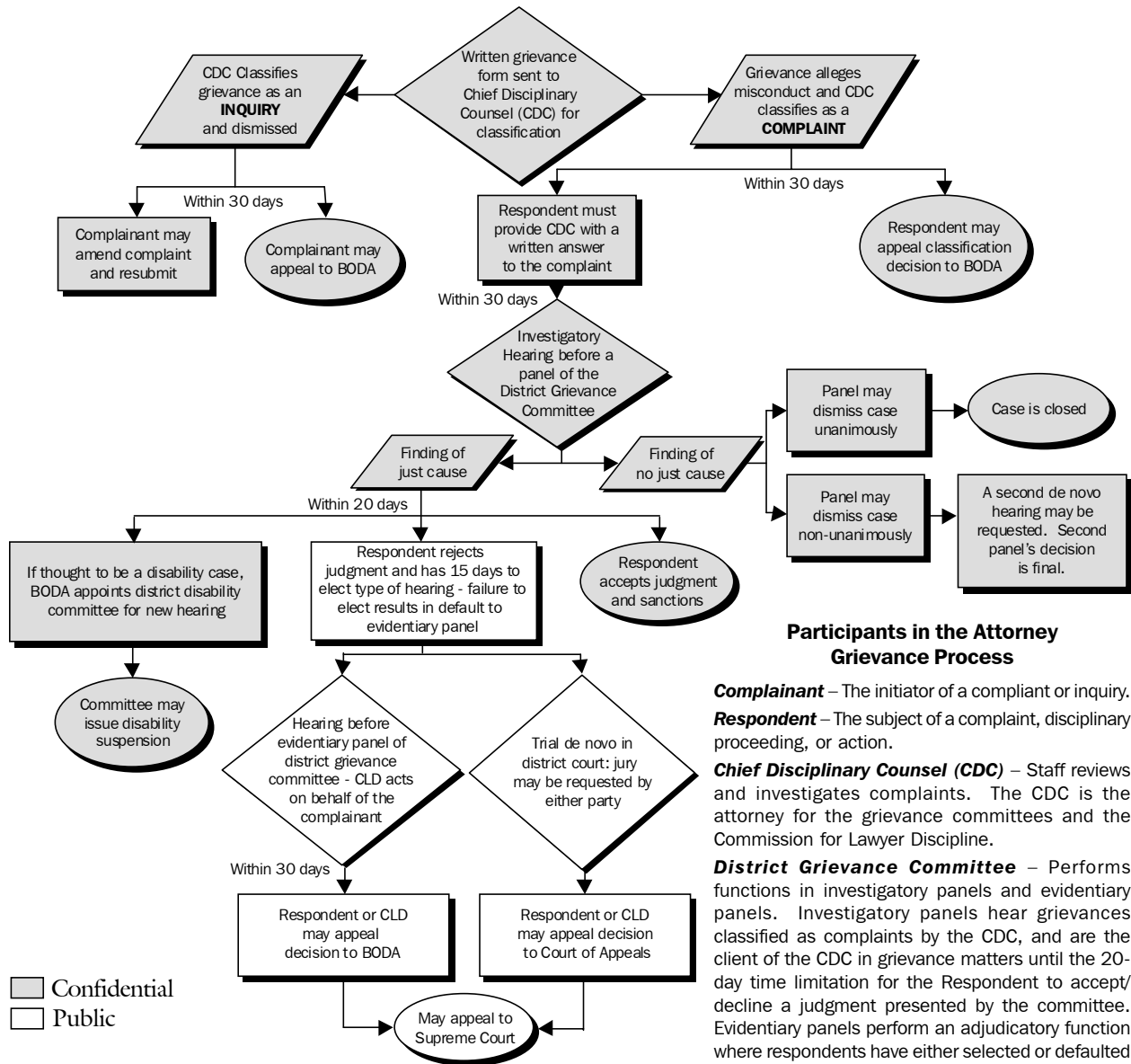
<sup>6</sup> Memorandum from the Chief Disciplinary Counsel, January 17, 2002.

<sup>7</sup> Memorandum from the Chief Disciplinary Counsel, January 28, 2002.

<sup>8</sup> Deloitte & Touche, *State Bar of Texas, Review of Grievance and Disciplinary Process* (December 2001).

<sup>9</sup> Texas House Bill 792, 77th Legislature (2001).

## Current Attorney Grievance Process



### Participants in the Attorney Grievance Process

**Complainant** – The initiator of a complaint or inquiry.

**Respondent** – The subject of a complaint, disciplinary proceeding, or action.

**Chief Disciplinary Counsel (CDC)** – Staff reviews and investigates complaints. The CDC is the attorney for the grievance committees and the Commission for Lawyer Discipline.

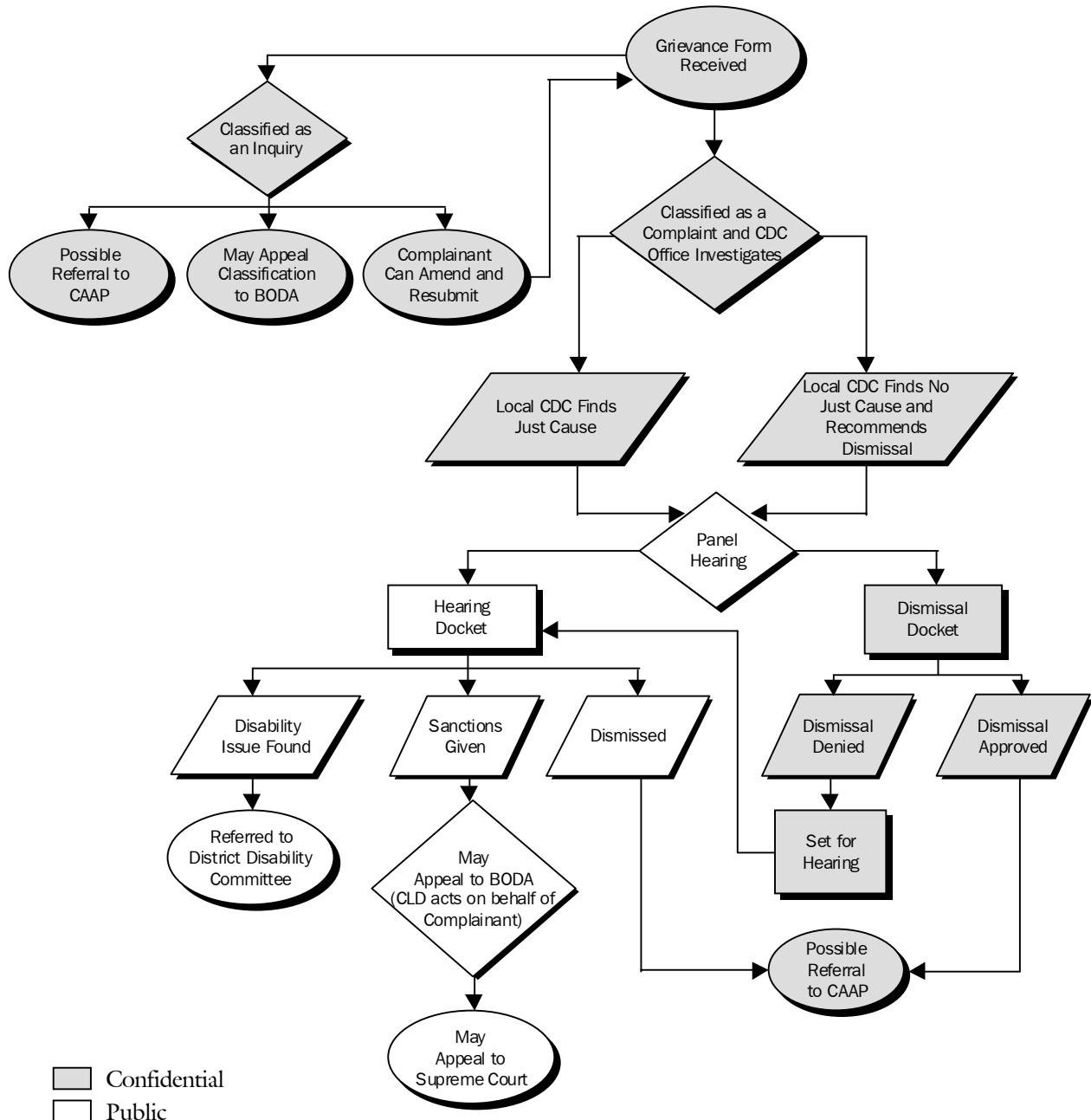
**District Grievance Committee** – Performs functions in investigatory panels and evidentiary panels. Investigatory panels hear grievances classified as complaints by the CDC, and are the client of the CDC in grievance matters until the 20-day time limitation for the Respondent to accept/decline a judgment presented by the committee. Evidentiary panels perform an adjudicatory function where respondents have either selected or defaulted into the evidentiary stage.

**Commission for Lawyer Discipline (CLD)** – Oversees the grievance process. The CLD is the client in proceedings where the grievance committee's jurisdiction has lapsed, and all original proceedings before BODA.

**Board of Disciplinary Appeals (BODA)** – A judicial body with original jurisdiction in compulsory discipline cases, reciprocal discipline cases, and motions to revoke probation. BODA has final appellate jurisdiction in classification decisions and acts as an intermediate appellate court for evidentiary panel judgments.

Confidential  
 Public

## Revised Attorney Grievance Process





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## Issue 4

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### The State Bar Does Not Maximize Services Offered Through Its Client-Attorney Assistance Program.

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## Summary

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### Key Recommendations

- Directly link the Client-Attorney Assistance Program (CAAP) with the disciplinary system and require coordination with other State Bar programs.
- The State Bar should institute clearly defined goals and outcome measures for CAAP to track its performance and effect on the grievance system.
- The State Bar should increase attorney and public awareness of CAAP by expanding program outreach and accessibility.

### Key Findings

- Poor coordination with State Bar programs limits CAAP's ability to address non-disciplinary issues.
- The State Bar does not adequately promote CAAP to attorneys and clients, and does not have a strategy to guide the program.

### Conclusion

CAAP operates a voluntary mediation and dispute resolution program for non-disciplinary offenses. With narrowly defined objectives and little coordination with other State Bar programs, CAAP has had limited success. In addition, attorneys and clients are not aware of the remedies available through CAAP and other State Bar programs.

The Sunset review assessed the effectiveness of the process in serving the public, by helping resolve problems that do not rise to the level of a grievance. The review found the potential to reduce the number of matters that enter the grievance system by addressing complaints at an earlier stage, and resolve minor attorney-client conflict without invoking formal discipline. These recommendations would strengthen CAAP by establishing clear goals and enabling increased coordination between programs, reducing the number and enhancing the validity of filed grievances. In addition, linking the program to the disciplinary system would expand the role of CAAP and allow it to handle problems that cannot be addressed by the disciplinary system.

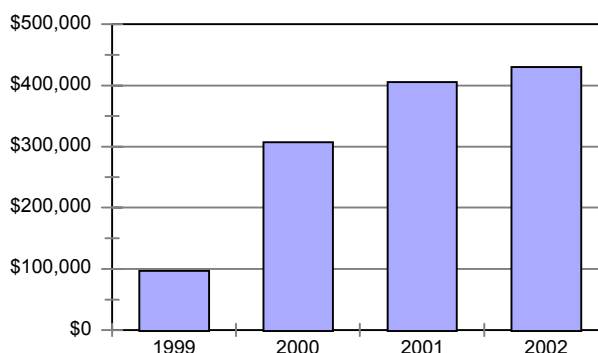
## Support

**The State Bar created the Client-Attorney Assistance Program (CAAP) to address public concerns that do not rise to the level of a grievance.**

*The program budget for CAAP has quadrupled since its inception in 1999.*

- The State Bar Board of Directors and the Commission for Lawyer Discipline created CAAP in response to a 1991 Sunset statutory directive to establish a voluntary mediation and dispute resolution procedure. The intent was to address attorney misconduct that does not constitute a violation of the disciplinary rules.<sup>1</sup> In 1999, after a six-month pilot project, the Board approved CAAP for statewide implementation. As illustrated in the chart, *CAAP Budget*, the program budget has quadrupled in the last four years.

**CAAP Budget**

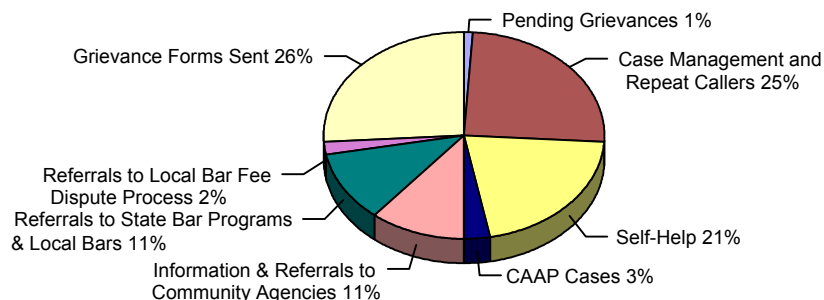


- CAAP’s primary purpose is to answer the Grievance Information Hotline, originally answered by the Office of the Chief Disciplinary Counsel (CDC). The objective of shifting hotline responsibilities to CAAP was twofold: to alleviate the workload of the CDC by allowing CAAP to pre-screen potential complainants, redirecting them to appropriate services and resources when a complaint does not rise to the level of a grievance; and to provide a neutral forum for resolving non-grievance level problems that affect the attorney-client relationship.<sup>2</sup>
- In fiscal year 2000-2001, CAAP received 16,909 calls, with one quarter requesting grievance forms. Another 21 percent received self-help options. CAAP also makes referrals to other State Bar services and local bar associations, and retains some cases which its staff will handle directly. The pie chart, *CAAP Call Volume by Type - 2001*, provides a specific breakdown of CAAP call activity.

*In fiscal year 2001, CAAP received 16,909 calls.*

**Poor coordination with State Bar programs limits CAAP’s ability to address non-disciplinary issues.**

- CAAP offers referral and assistance services only *before* grievances are filed. Once a grievance is filed, if the issue does not rise to the

**CAAP Call Volume by Type - 2001**

*Only 3 percent of all calls received actually become CAAP cases.*

level of complaint, the matter is dismissed. CDC rarely uses CAAP to resolve these problems. Attorneys and clients are not receiving help to address or prevent the underlying problems that eventually lead to grievances. More than two-thirds of all grievances filed are dismissed as inquiries, leaving no redress for complainants and no avenue for CAAP involvement. Many of these problems involve fee disputes, neglect, miscommunication, poor practice management, or substance abuse, for which the State Bar has many other programs to address.

- For the calls that CAAP does receive, relatively few result in direct action by CAAP. Only 3 percent of all calls become cases directly handled by CAAP.<sup>3</sup> In addition, despite the initial goal of the program to provide alternative dispute resolution, only four formal mediations have occurred since its inception.<sup>4</sup> Most CAAP calls are informational, with the majority of calls referred to other programs or offices.
- CAAP is housed in the Technology and Strategic Initiatives Division rather than being located where it could better coordinate with the grievance system and similar member and public service programs. While the Strategic Initiatives Division serves as a program incubator within the State Bar, CAAP's continued separation from other relevant programs diminishes its ability to maximize coordination.

*Only four formal mediations have occurred since CAAP began in 1999.*

**The State Bar does not adequately promote CAAP to attorneys and clients, and does not have a strategy to guide the program.**

- The State Bar is not promoting CAAP to its members or to the public. As a result, attorneys and complainants are unaware of the many remedies available through CAAP and other Bar programs. Information about CAAP is not available on the State Bar Web site or in the State Bar phone directory. In an informal survey conducted by the strategic planning committee, 23 percent of members were unfamiliar with CAAP and 17 percent of the Bar leadership rated CAAP as one of the least valuable programs.<sup>5</sup>

*CAAP does not provide assistance to the San Antonio and Houston regions, which account for almost half of all Texas attorneys.*

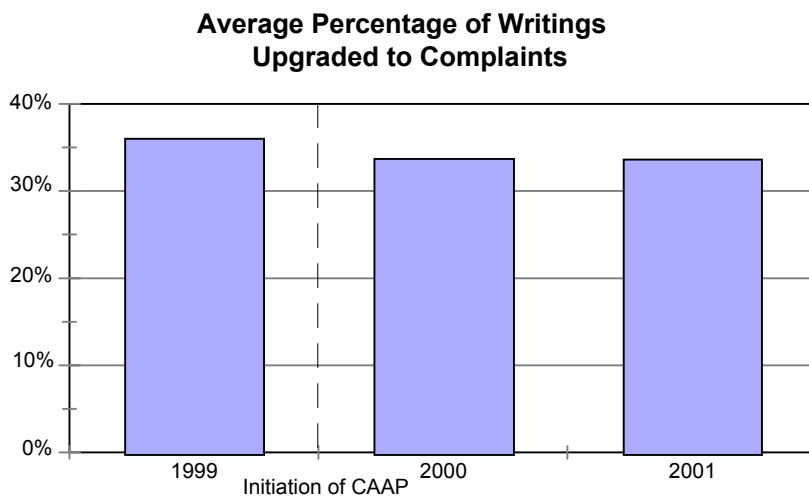
The grievance hotline provides callers with immediate contact with a program associate about half the time. The other half of callers must leave a message that will be returned within two business days. During the review, Sunset staff was never able to reach a live person over a period of five days, calling three times per day.

- The statutory directive enacted in 1991 was not implemented until the 1999 creation of CAAP. Although approved for statewide implementation, CAAP does not provide assistance to some regions. The grievance hotline applies only to the Dallas, Austin, and Fort Worth regions, not the Houston and San Antonio regions, where callers must contact the local CDC office directly. A recent audit of the State Bar’s grievance process by Deloitte & Touche notes that the Houston and San Antonio regions account for almost half (42 percent) of all grievances filed, meaning CAAP is not currently serving half of all Texas attorneys.<sup>6</sup>
- CAAP is not currently integrated into the State Bar’s disciplinary system and is not expected to reduce disciplinary caseloads. This illustrates how the Bar has not found a more strategic use for CAAP to work within the disciplinary system to solve a broader range of problems than it currently addresses. The Bar has supported the program with annual funding that has grown to \$430,000, but its limited view of this program prevents CAAP from having a greater impact.

**Other states’ experiences and recent studies indicate that programs similar to CAAP can have a significant impact on the disciplinary process.**

- CAAP was modeled after similar programs in Mississippi and Georgia designed to address the number of grievances filed which are frivolous or beyond the scope of the ethical rules. In Georgia, 63 percent of all issues were resolved without disciplinary involvement, and the number of grievances has decreased by 49 percent.<sup>7</sup>

The number of complaints in Mississippi was reduced by 30 percent after implementation of their Consumer Assistance Program. In contrast, the number of complaints has not decreased since the initiation of CAAP, as shown in the chart, *Average Percentage of Writings Upgraded to Complaints*.





- The Bar itself, in a 1999 Report on the CAAP Pilot Project recognized that the program role could be expanded to include referrals from CDC.<sup>8</sup> An audit by Deloitte & Touche in December 2001 found that CAAP's impact on the process appears limited, and has not been effectively integrated into the disciplinary process, impairing its effectiveness. The audit also recognized the need for an expanded role for CAAP, recommending that all dismissed writings be referred to CAAP for follow-up.<sup>9</sup>

## Recommendation

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### Change in Statute

#### **4.1 Directly link CAAP with the disciplinary system and require coordination with other State Bar programs.**

By referring all client-filed classification and case dismissals to CAAP, the grievance system can concentrate on actionable complaints and the others can be addressed by CAAP. Clients would benefit by receiving an immediate response, speedy resolution, and appropriate information and referrals. Attorneys would also benefit from services resulting in prevention of future grievances and improved client satisfaction and service. As discussed in Issue 3, all dismissals of client-filed grievances would be referred to CAAP as a voluntary alternative for further resolution. Addressing non-disciplinary issues, CAAP would remain separate from the CDC, yet would maintain the confidentiality of the disciplinary system to allow full cooperation of the client and the attorney in resolving non-grievable issues. The State Bar should determine a more appropriate location for the program within its organizational structure, possibly in the Member and Public Services Division.

### Management Action

#### **4.2 The State Bar should institute clearly defined goals and outcome measures for CAAP to track its performance and effect on the grievance system.**

CAAP's main objective should be to address the number of inactionable complaints. CAAP should attempt to facilitate the resolution of minor problems informally or direct the caller to the proper channels, including State Bar programs specifically designed to address these issues. The program should set specific objectives and track performance and impact. If instituted properly, CAAP should have a significant effect on the grievance system.

#### **4.3 The State Bar should increase attorney and public awareness of CAAP by expanding program outreach and accessibility.**

This recommendation directs the State Bar to educate both members and the public of grievance alternatives by promoting CAAP through the State Bar Web site and increasing program accessibility. The State Bar could expand program outreach by publishing information about CAAP, making information available by phone or via the Internet, and increasing awareness through State Bar publications.

## Impact

The intent of these recommendations is to define clear goals and outcome measures for CAAP, ensuring that the program's efforts are maximized through increased coordination with applicable State Bar programs. Instead of simply serving as a hotline, CAAP will become an effective remedy for non-grievable offenses. CAAP may lower the number of complaints, prevent repeat offenses, and improve conduct within the profession.

## Fiscal Implication

These recommendations would have no fiscal impact to the State, but would increase costs to the State Bar by approximately \$366,000 annually. This cost is based on the number of grievances filed in 2001 and the CDC estimate that 85 percent of these grievances are client-filed. Applying the same dismissal rate as in 2001, would result in 6,094 dismissals of client-filed complaints. Assuming that the cost per contact would be \$15, the maximum estimated by the State Bar, and that each CAAP case would require four contacts, this recommendation would result in a total annual cost of \$365,650. Similar resolution time is anticipated for each new contact. Any additional expenses incurred through increased caseload would be offset by increased effectiveness through better success measures and improved program coordination.

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<sup>1</sup> Texas Government Code Ann., ch. 8, sec. 81.075(e).

<sup>2</sup> State Bar of Texas, *Self-Evaluation Report*, submitted to the Sunset Advisory Commission (August 2001), p. 102.

<sup>3</sup> State Bar of Texas, *CAAP Executive Summary Report for December 1-31, 2001*, (January 2002), p. 5.

<sup>4</sup> Interview with State Bar of Texas, Client-Attorney Assistance Program staff (Austin, Texas, January 22, 2002).

<sup>5</sup> State Bar of Texas, Board Strategic Planning Committee Member Services Subcommittee, *Member Services Survey* (Fall 2001), p. 9.

<sup>6</sup> Deloitte & Touche, *State Bar of Texas, Review of Grievance and Disciplinary Process* (December 2001), p. 55.

<sup>7</sup> Cynthia Hinrichs Clanton, *The Consumer Assistance Program: A Referee for Clients vs. Lawyers*, Georgia Bar Journal, October 1997, Vol. 3 No.2.

<sup>8</sup> Constance Miller, *Report on CAAP Pilot Project* (April 2000), p.16.

<sup>9</sup> Deloitte & Touche, *State Bar of Texas, Review of Grievance and Disciplinary Process* (December 2001), p. 62.

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## Issue 5

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### **Requiring 51 Percent of State Bar Members to Vote in a Referendum Prevents Needed Changes to Rules and Ignores the Clear Majority in an Election.**

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## Summary

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### **Key Recommendations**

- Repeal the statutory 51 percent member participation requirement in Bar referenda and clarify the Supreme Court's authority to promulgate rules without approval of the Bar membership.
- Authorize the State Bar to administer referenda electronically.
- The State Bar should track all costs associated with administering referenda.

### **Key Findings**

- Requiring a majority of members to vote in State Bar referenda impedes the Supreme Court's ability to make needed changes in rules.
- Because the majority decision in a referendum is irrelevant without 51 percent participation, opponents may gain an unfair advantage by not voting, thwarting the will of a greater number of Bar members.
- Referenda require the expense of significant State Bar resources.

### **Conclusion**

The Supreme Court and the State Bar Act require members of the Bar to vote on proposed changes to rules governing the operations of the State Bar, and the conduct and discipline of its members. However, this ability to self-regulate is hindered by a statutory provision that requires at least 51 percent of the Bar's registered members to vote in an election. The Bar has difficulty achieving this turnout and referenda sometimes fail – even when a clear majority of the votes support proposed changes. The 51 percent requirement allows opponents of proposed measures to defeat a referendum by encouraging a few lawyers not to vote rather than attempting to shift many lawyers' votes.

The Sunset review considered how the 51 percent requirement affects the Bar's ability to implement needed changes to its operational rules. Typically, referenda involve changes to disciplinary rules and Bar operations, so that an inability to make needed changes directly affects lawyers and the public. Eliminating the 51 percent requirement and allowing a simple majority of those voting to determine the outcome of the election would allow the Supreme Court and the State Bar to more quickly implement needed changes in rules. Increased efficiencies may also be gained through additional recommendations that would authorize use of electronic balloting, and require the State Bar to track referendum expenses.

# Support

## The Supreme Court and the State Bar Act require members of the State Bar to vote on proposed rule changes.

- Although the Supreme Court has inherent authority to promulgate rules governing the State Bar and its members, it complies with the State Bar Act requirement for a vote of the Bar membership approving proposed rule changes. Further, the referendum is valid only if 51 percent of the Bar membership votes in the election.<sup>1</sup>

The State Bar’s Board of Directors or members may propose amendments to rules which the Supreme Court considers and approves for referendum. State law requires that the Supreme Court administer the referendum by mailing proposed rule changes to each registered member of the State Bar. After 30 days, the Court will count the returned ballots and promulgate only those rules that receive a majority of the votes cast in a valid referendum. To comply with the 51 percent requirement today, a referendum would require the Supreme Court to mail 69,047 ballots to member attorneys, and for at least 35,214 of those attorneys to vote.

*To achieve 51 percent participation today, a referendum would require 35,214 members to vote.*

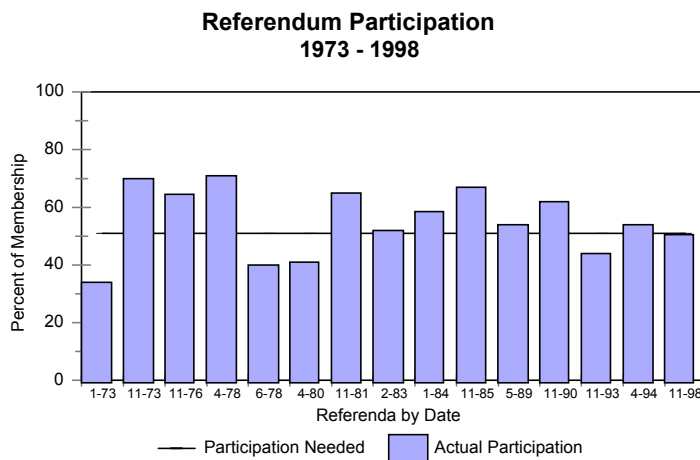
- A referendum is required for all rules concerning the operation, maintenance, and conduct of the State Bar, and the discipline of its members. In addition to rules affecting lawyer discipline, Bar referenda include rules governing lawyer advertising, minimum continuing legal education, and oversight of the Bar. Members of the Bar also vote to approve proposed dues increases.

## Requiring a majority of members to vote in State Bar referenda impedes the Supreme Court’s ability to make needed changes to rules.

- Since 1944, the Bar has conducted 32 referenda subject to the 51 percent member participation requirement. Of these, 12 referenda failed to achieve the required voter participation, thus preventing

the proposed rules from taking effect. The chart, *Referendum Participation*, shows the last 25 years of Bar referenda, of which more than one-third failed to achieve the necessary 51 percent participation.

The 51 percent requirement is strictly enforced, as evidenced in the 1998 referendum, which contained several amendments to the State Bar Rules, the Texas Disciplinary Rules of Professional Conduct, and the Texas Rules of Disciplinary Procedure. Although 50.57



percent of the Bar's members participated in the election, the Court declared this insufficient to meet the statutory 51 percent requirement and did not adopt changes to the rules.<sup>2</sup> The textbox provides additional information about the 1998 referendum.

- The 51 percent participation requirement may prevent the Bar from making needed rule changes. By the time these rule proposals come to vote, they have already gone through development by the Bar's staff and various committees, and have been proposed by the Bar's Board of Directors to the Supreme Court, which approves them for election. Aside from the uniqueness of allowing the regulated community to vote on its own rules, this is another impediment to making needed changes to rules.
- The Supreme Court has exercised its inherent authority to promulgate rules despite a failed referendum only once. In 1977, The U.S. Supreme Court ruled the prohibition of lawyer advertising as unconstitutional. In an attempt to make Texas Bar rules compliant with the U.S. Court ruling, the Texas Supreme Court authorized the State Bar to conduct a referendum to allow advertising. When this and a second referendum failed to meet the 51 percent requirement, the Texas Supreme Court was forced to make the needed rule changes without a referendum.<sup>3</sup>

**Because the majority decision in a referendum is irrelevant without 51 percent participation, opponents may gain an unfair advantage by not voting, thwarting the will of greater numbers of Bar members.**

- Opponents of referenda items may gain leverage by taking advantage of voter apathy and encouraging likely voters not to participate, thereby preventing the election from receiving the required 51 percent turnout. In the last 15 referenda, an average of 55 percent of the Bar's members participated, generally voting overwhelmingly in favor of proposed changes. Assuming this level of participation, opponents can defeat a referendum by convincing just five percent of the members not to vote. Bar staff report that in the 1998 failed referendum, opponents of a proposed change to advertising rules encouraged State Bar members not to vote and succeeded in defeating the measure.<sup>4</sup> In fact, if just 271 more lawyers had voted, the referendum would have been valid. In addition, because various measures on the ballot enjoyed more than 75 percent approval of the lawyers who voted, they each would have easily passed.<sup>5</sup>
- The will of members who do participate is thwarted when voter turnout is below 51 percent. In every failed referenda, members

#### 1998 Referendum

In an effort to include its newest members, the State Bar provided ballots to 1,288 newly inducted lawyers. Although given very little time to consider and return their ballots, 340 new members voted. The State Bar counted these 340 votes toward the required turnout, but did not apply the 1,288 ballots toward the total number of lawyers eligible to vote. As a Supreme Court Special Master concluded, voter participation was improperly tabulated and voter participation, at 50.57 percent, was insufficient to validate the referendum.

*Opponents can defeat a referendum by convincing just 5 percent of the members not to vote.*

*In the last five failed referenda, an average of 82 percent of the voting members supported proposed rule changes, but did not prevail.*

who participated voted overwhelmingly in favor of proposed rule changes. In the last five failed referenda since 1973, an average of 82 percent of the voting members supported proposed changes in rules, but still did not prevail.

- The 51 percent requirement does not ensure broader support for rule changes. Depending on voter turnout and the margin of the vote, one referendum may fail with the support of a greater percentage of the total Bar membership than another referendum that passes. This was actually the case with the 1998 referendum.

**To comply with referendum requirements, the State Bar expends significant resources that could be better directed to member or public services.**

- The State Bar does not closely track referendum spending, including all expenses associated with preparing, promoting, and conducting referenda. In fact, for one referendum that occurred in 1993, Bar records only indicate a cost of \$96. The table provides recorded costs associated with other recent referenda. Generally, the Bar budgets \$250,000 for each referendum. However, in the 1998 referendum, Bar staff noted that many costs, such as staff time, travel, printing, and publishing the referendum in the *Texas Bar Journal* were absorbed into existing program budgets, resulting in an actual cost of perhaps \$500,000.<sup>6</sup>

Referendum Costs		
Date	Percent Participation	Recorded Cost*
November 1990	62% (Passed)	\$265,672
November 1993	44% (Failed)	n/a
April 1994	53% (Passed)	\$183,778
November 1998	50.57% (Failed)	\$252,340
*Not inclusive of all expenses.		

- Because the State Bar Act requires that referendum ballots be *mailed* to each registered member of the State Bar, printing and mailing ballots and related referendum materials represent a significant portion of the election costs. In recent referenda, printing and mailing represented between 85 and 98 percent of the identified costs associated with elections.
- When a referendum fails to gain the participation of 51 percent of the members, the State Bar frequently has had to conduct another referendum to achieve the needed change. Repeat referenda, such as occurred in April 1980 and April 1994, further drain State Bar resources.
- Bar referenda outspend key public and member service programs, even when considering a referendum budget of \$250,000, which Bar staff acknowledge is significantly less than what is actually spent. For example, this amount is equivalent to the amount of the annual

*Bar referenda outspend key public and member service programs.*

general fund transfer to the Client Security Fund, used to compensate clients in cases of lawyer misconduct. The table provides a comparison of Bar spending on other key service programs with its standard referendum budget.

Referendum Costs		
	Expended in 2000-2001	Variance from Referendum Budget of \$250,000
Lawyer Referral Information Service	\$257,356	\$7,356
Texas Lawyers' Assistance Program	\$171,373	(\$78,627)
Law Office Management Program	\$226,016	(\$23,984)
Professional Enhancement Program	\$80,243	(\$169,757)

## Recommendation

### Change in Statute

#### **5.1 Repeal the 51 percent participation requirement in rulemaking and dues referenda.**

This recommendation would allow Bar members to continue voting in referenda concerning proposed rule changes and dues increases, but would eliminate the requirement for 51 percent of registered Bar members to vote, for a referendum to be considered valid. Instead, a simple majority would determine the outcome of a referendum. Under Supreme Court direction, the State Bar should continue to promote and track member participation in elections, and should report participation levels to the Supreme Court and in the *Texas Bar Journal*.

#### **5.2 Clarify that the Supreme Court has the authority to promulgate rules without the approval of the State Bar membership.**

The statute should acknowledge the Supreme Court's discretionary authority in determining when a referendum is unnecessary. Regardless of an election or its outcome, the Supreme Court may promulgate rules as it sees fit.

#### **5.3 Authorize the State Bar to administer referenda electronically.**

Advances in technology and use of the Internet provide increasing opportunities for the State Bar to conduct more efficient and cost effective referenda. This recommendation would authorize the State Bar, with Supreme Court approval, to distribute and receive referendum ballots and related materials electronically. The Bar could build upon its secure Web site to implement this recommendation. However, the recommendation would not take effect until the State Bar could assure the Supreme Court that all members have secure access to information and voting.

## Management Action

### 5.4 The State Bar should track all costs associated with administering referenda.

The State Bar should develop a standard approach, subject to Supreme Court approval, for determining actual costs incurred in the administration of referenda. This approach should account for staff time, travel, direct and indirect publication expenses, mailing ballots, and other promotional materials and activities. The State Bar should report these costs to the Supreme Court and in the *Texas Bar Journal*, to notify all members.

## Impact

Eliminating the 51 percent requirement and allowing a simple majority to determine the outcome of the election would enable the State Bar to implement needed rules more quickly, allowing the State Bar to provide a higher quality of service to its members and the public. This recommendation would also prevent the waste of Bar resources on referenda that deal with issues that failed in earlier elections.

As an additional cost-saving measure, the State Bar would be authorized to send and receive ballots electronically. Mailing ballots represents a significant portion of referendum expenses. Use of electronic referenda would minimize these costs and likely increase voter participation.

The State Bar may identify additional opportunities to cut costs by more carefully considering its referendum expenditures. With a standard approach for reflecting direct and indirect expenses, the State Bar would be able to more accurately budget for referenda and administer them more efficiently.

## Fiscal Implication

These recommendations would have no fiscal impact to the State. The State Bar would realize periodic savings through elimination of the 51 percent requirement to the extent that it would not need to repeat failed referenda, which cost the Bar as much as \$500,000 each. Additionally, the Supreme Court may promulgate rules without going through the referendum process. Through use of electronic media, the State Bar should also achieve reductions in referendum printing and mailing costs. Finally, closer examination of referendum expenditures should enable the State Bar to identify additional cost saving measures. Since the State Bar does not routinely conduct rule referenda, any immediate savings cannot be estimated for this report.

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<sup>1</sup> Texas Government Code Ann., ch. 81, sec. 81.024.

<sup>2</sup> Order of the Supreme Court of Texas, *State Referendum '98*. Misc. Docket No. 99-9123.

<sup>3</sup> Order of the Supreme Court of Texas. July 21, 1982.

<sup>4</sup> Interview with State Bar staff and Board members (Austin, Texas, November 15, 2001).

<sup>5</sup> "Referendum '98 Results," *Texas Bar Journal*, vol. 62 (January 1999), p. 38.

<sup>6</sup> Telephone interview with State Bar staff (Austin, Texas, February 14, 2002).



## **ACROSS-THE-BOARD RECOMMENDATIONS**

<b>State Bar of Texas</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Not Applicable	1. Require at least one-third public membership on state agency policymaking bodies.
Update	2. Require specific provisions relating to conflicts of interest.
Update	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Not Applicable	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply & Modify	7. Require training for members of policymaking bodies.
Update	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Apply & Modify	10. Require information to be maintained on complaints.
Update	11. Require development of an equal employment opportunity policy.
Apply	12. Require information and training on the State Employee Incentive Program.

<b>State Bar of Texas</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>B. LICENSING</b>
Apply & Modify	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
Not Applicable	2. Provide for notice to a person taking an examination of the results of the examination within a reasonable time of the testing date.
Not Applicable	3. Authorize agencies to establish a procedure for licensing applicants who hold a license issued by another state.
Not Applicable	4. Authorize agencies to issue provisional licenses to license applicants who hold a current license in another state.
Update	5. Authorize the staggered renewal of licenses.
Not Applicable	6. Authorize agencies to use a full range of penalties.
Apply & Modify	7. Revise restrictive rules or statutes to allow advertising and competitive bidding practices that are not deceptive or misleading.
Apply	8. Require the policymaking body to adopt a system of continuing education.

## **AGENCY INFORMATION**

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# Agency Information

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## Agency at a Glance

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Dating back to 1882, the State Bar has evolved from a voluntary association of lawyers to a quasi-governmental, administrative agency of the judicial branch. Operating as both a regulatory agency and a professional association, the State Bar currently exercises jurisdiction over nearly 70,000 Texas attorneys who are required to be members of the Bar.

Focusing its efforts on enhancing member professionalism, public protection and service, the State Bar's major functions include:

- assisting the courts in improving the administration of justice;
- advancing the quality of legal services to the public through various professional development programs including continuing legal education programs;
- protecting the public by maintaining professional rules of conduct and administering the Bar's attorney disciplinary and disability system;
- serving the public by providing law-related educational programs and lawyer referral services and promoting equal access to justice by all citizens; and
- assisting local bar associations.

### On the Internet

The State Bar offers the following Internet sites for use by the public and members of the Bar.

[www.texasbar.com](http://www.texasbar.com)

The State Bar's Web site offers the public and lawyers information regarding various Bar services.

[www.mytexasbar.com](http://www.mytexasbar.com)

My Texas Bar serves lawyers as a customizable Internet portal to various legal tools and resources.

[www.TexasBarCLE.com](http://www.TexasBarCLE.com)

The Texas Bar continuing legal education (CLE) Web site offers lawyers an online library with more than 3,000 CLE articles.

## Key Facts

- **Funding.** The State Bar operates with an annual budget of about \$26 million. The State Bar receives no state appropriations, but is a public corporation funded primarily by membership dues and professional development program fees. The State Bar's budget is subject to the approval of the State Bar's Board of Directors and the Supreme Court.
- **Staffing.** The State Bar employs a staff of almost 300, two-thirds of which work in Austin and the rest in regional and field offices located throughout the state. State Bar employees are not employees of the State of Texas.

*In FY 2000 - 2001 the State Bar received 8,962 grievances about attorneys.*

- **Governance.** The State Bar Board of Directors is comprised of 46 members and 15 liaisons. Most members are elected by lawyers from State Bar districts. The State Bar also has three officers elected by the Bar's membership statewide.
- **Complaints.** In the 2000-2001 fiscal year, the agency received 8,962 grievances. Sixty-nine percent were dismissed, and 31 percent were pursued as complaints. Investigation of these complaints led to 530 sanctions against attorneys; 30 percent of which were private reprimands, and 35 percent of which were suspensions.
- **Continuing Education.** The State Bar requires lawyers to take a minimum of 15 hours of continuing legal education (CLE) each year, to encourage high standards of professional competency and enhance the quality of legal services to the public.
- **Lawyer Assistance.** The Texas Lawyers' Assistance Program targets the estimated 10,000 to 15,000 lawyers in Texas suffering from alcoholism, chemical dependency, or mental illness. Through this program, the State Bar provides around-the-clock hotline assistance and referral services to lawyers and law students.
- **Client Assistance.** Through programs like the Client-Attorney Assistance Program and the Client Security Fund (CSF), the State Bar seeks to address the needs of attorneys' clients. In the 2000-2001 fiscal year, the CSF awarded \$492,190 to individuals who suffered a loss from attorney misconduct.
- **Access to Justice.** The Texas Equal Access to Justice Foundation administers the Texas Interest on Lawyers' Trust Accounts Program (IOLTA) and the Basic Civil Legal Services Program. Combined, these programs generate \$8.7 million annually to support legal services for low-income Texans.

## Major Events in Agency History

*In 1939, the Legislature enacted the State Bar Act and required that all attorneys licensed to practice law in Texas belong to the State Bar.*

- 1882** Texas Bar Association formed in Galveston to advance the science of jurisprudence, promote uniformity of legislation in the administration of justice in the state, and encourage interaction among its members.
- 1939** The Legislature enacted the State Bar Act establishing the Bar as a public corporation and mandating that all attorneys licensed to practice law in Texas belong to the State Bar.
- 1940** Under its inherent powers to regulate the judiciary, the Texas Supreme Court adopted operating rules, methods of lawyer discipline, and canons of ethics.

- 1979** After Sunset review, the Legislature re-enacted the State Bar Act, providing for public members on the Board of Directors and grievance committees. The Supreme Court of Texas entered an order that incorporated the State Bar Act.
- 1984** The Supreme Court adopted and promulgated the State Bar's Interest on Lawyers' Trust Accounts petition to provide funding for free civil legal services to low-income Texans. Participation in the program was voluntary.
- 1985** In a referendum, State Bar members voted to implement the Minimum Continuing Legal Education program, which required 15 hours of education each year for every State Bar member.
- 1989** The Supreme Court signed an order making Interest on Lawyers' Trust Accounts mandatory for members of the Bar.
- 1990** Based on Sunset recommendations, attorneys approved new Rules of Disciplinary Procedure and established the Commission for Lawyer Discipline to administer the disciplinary system. Attorneys also approved the restructuring and increase of membership dues.
- 1991** State Bar Act re-enacted after Sunset review. The four minority member directors became voting members of the Board.
- 2001** The Supreme Court and the State Bar created the Texas Access to Justice Commission to build an integrated civil legal services system. The State Bar reorganized its management and division structure.

*Following Sunset review in 1979 and 1991, the Legislature re-enacted the State Bar Act.*

## Organization

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### Governing Board

The State Bar is governed by a 46-member Board of Directors, with 15 liaisons. Voting members of the Board include three State Bar officers, three Texas Young Lawyers Association (TYLA) officers, 30 members of the State Bar elected by the membership from 17 districts, four minority member directors appointed by the State Bar President, and six public members appointed by the Supreme Court. The map on page 49 shows the 17 Bar districts represented on the Board. Non-voting members include the immediate past Chair, six State Bar section representatives, four judicial liaisons, one out-of-state lawyer liaison, and three ex officio State Bar staff members. Appendix A, *State Bar Board of Directors*, provides a complete list of the Board's membership. The Board Chair is elected by the Board of Directors, and the President is elected by the general membership of the State Bar.

*The State Bar is governed by a 46-member Board of Directors, with 15 liaisons.*

The Board is responsible for the overall administration and direction of the State Bar, including strategic planning, development and implementation of the budget and fiscal policies, establishment of standing and special committees and task forces, and hiring the Executive Director and General Counsel. The Board is also responsible for certain regulatory and enforcement functions such as collecting attorneys' dues, and maintaining membership records on behalf of the Supreme Court of Texas; and regulating attorney compliance with Minimum Continuing Legal Education requirements and rules regarding advertising.

While the Board of Directors meets four times a year, it divides its workload among 17 Board committees, most of which are specified in the State Bar Policy Manual. These committees basically provide oversight for the operations of the Bar. Chief among these committees is the Executive Committee, specified in the Policy Manual, that meets monthly to perform functions as assigned by the full Board. The current membership of the Executive Committee is listed in the table on page 50. Appendix B summarizes the purpose and duties of each Board Committee.

The Board also relies on a network of 35 standing and seven special committees, established by the Board of Directors on the recommendation of the President-elect, who also appoints members from the ranks of volunteer attorneys. The textbox, *State Bar Standing and Special Committees*, describes the broad areas of focus that these committees have. A full listing of standing and special committees is provided in Appendices C and D, respectively.

Sections comprise another major group of volunteers in the State Bar who voluntarily pay nominal dues to align themselves within specialized substantive areas of law. Sections are either related to specific areas of the law (such as Business Law, Family Law, and Health Law), or are involved in particular interests and associational areas of law (such as Hispanic Issues and Government Lawyers). The sections play major roles in studying specific statutes and proposing related changes, offering continuing education and networking opportunities to their members, and helping enhance professional competence in particular areas of the law. Appendix E lists the sections and describes their purpose and duties.

The State Bar of Texas also provides for divisions whose membership consists of lay persons who either

### **State Bar Standing and Special Committees**

#### ***Advisory***

Act as advisors to decisionmakers and staff in special areas.

(Example: Bar Journal Board of Editors)

#### ***Regulatory***

Perform regulatory functions to ensure compliance with specific regulations.

(Example: Advertising Review Committee, Minimum Continuing Legal Education Committee, Lawyer Referral and Information Services Committee, Commission for Lawyer Discipline)

#### ***Rule Revisions***

Study rules and specific areas of the law and recommend possible revisions.

(Example: Court Rules Committee, Administration of Rules of Evidence Committee, Texas Disciplinary Rules of Professional Conduct Committee)

#### ***Service to the Profession***

Help enhance the skills and professionalism of Bar members.

(Example: Continuing Legal Education Committee, Law Office Management Committee, Professionalism Committee)

#### ***Service to the Public***

Assist the public with a variety of matters.

(Example: Legal Services to the Poor in Civil Matters Committee, Legal Services to the Poor in Criminal Matters Committee, Law Focused Education, Crime Victims Committee)

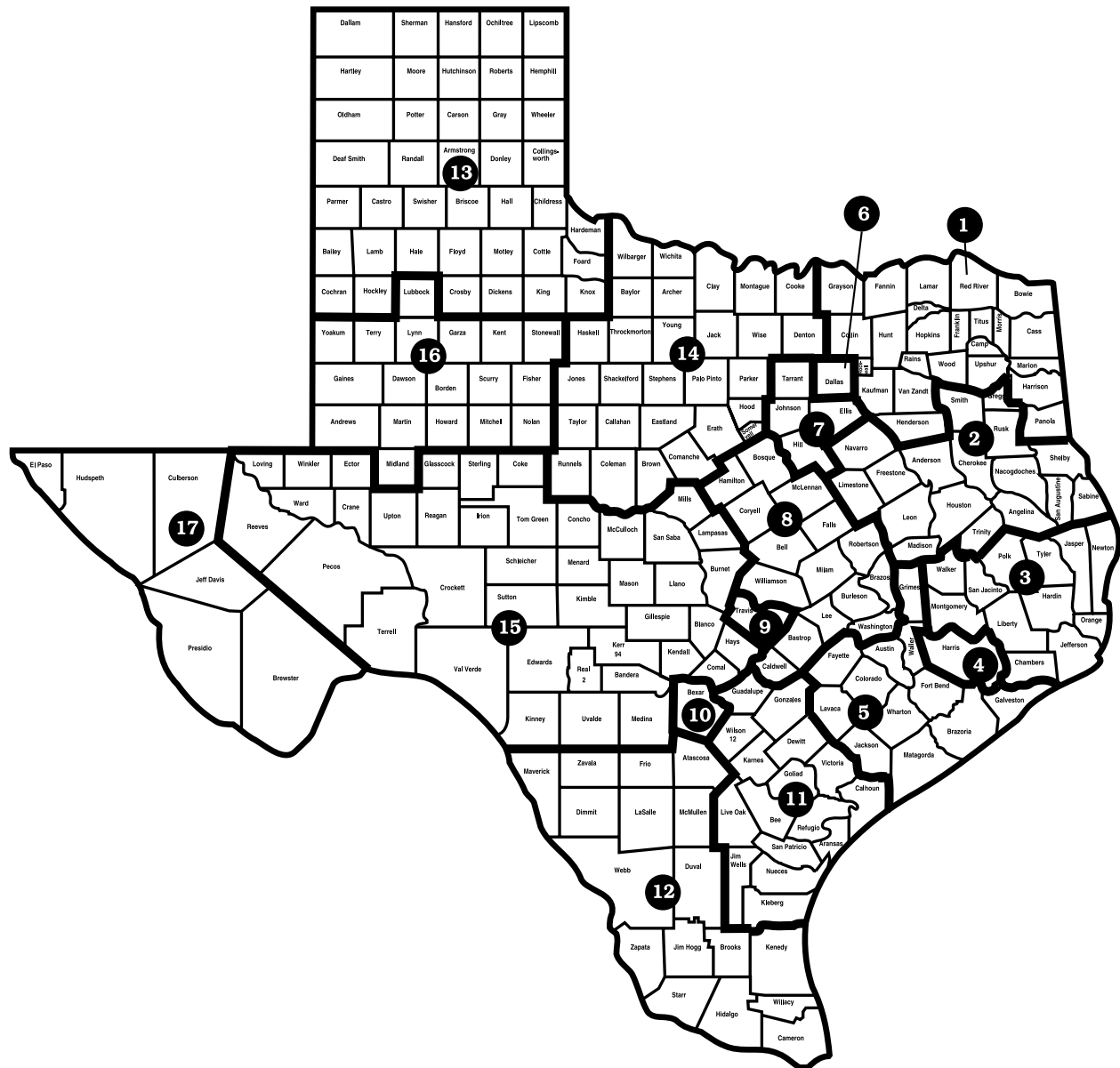
#### ***Other***

Carry out specific duties.

(Example: Annual Meeting Committee, Pattern Jury Charges - Civil Committee)



# State Bar of Texas Districts



<b>State Bar Executive Committee Members 2001 - 2002</b>			
<b>Name</b>	<b>Term</b>	<b>Qualification</b>	<b>Residence</b>
Broadus A. Spivey, President	2000 - 2003 (President 2001 - 2002)	Elected by Bar Membership	Austin
Guy N. Harrison, President-Elect	2001 - 2004 (President 2002 - 2003)	Elected by Bar Membership	Longview
Lynne Liberato, Past President	1999 - 2002 (President 2000 - 2001)	Elected by Bar Membership	Houston
Vidal G. Martinez, Chair	1999 - 2002 (Chair 2001 - 2002)	Minority Member	Houston
Richard T. Miller, Past Chair (non-voting)	1998 - 2001	Elected by Bar Membership	San Saba
Georgina M. Benavides	2000 - 2003	Minority Member	McAllen
Dan M. Boulware	2000 - 2003	Elected from District 7, Place 1	Cleburne
Jennifer Gibbins Durbin	2001 - 2004	Elected from District 10, Place 2	San Antonio
Amos L. Mazzant	2000 - 2003	TYLA President	Sherman
Charles W. Schwartz	2000 - 2003	Elected from District 4, Place 6	Houston
Luther H. Soules III	2000 - 2003	Elected from District 10, Place 1	San Antonio
David W. Stevens	2000 - 2003	Public Member	Austin
Andrew Strong	2001 - 2004	TYLA President-Elect	Houston
Steve Suttle	1999 - 2002	Elected from District 14	Abilene
D. Gibson Walton	1999 - 2002	Elected from District 4, Place 3	Houston
Melody M. Wilkinson	1999 - 2002	TYLA Past President	Fort Worth
Antonio Alvarado (non-voting, ex officio)	Term not defined	Executive Director	Austin
Dawn Miller (non-voting, ex officio)	Term not defined	Chief Disciplinary Counsel	Austin
Shelby Rogers (non-voting, ex officio)	Term not defined	Chief Operating Officer and General Counsel	Austin
Justice Craig T. Enoch (non-voting, ex officio)	Term not defined	Supreme Court Liaison	Austin

study law or who work with lawyers. The divisions help further the objectives of the State Bar and enhance professionalism by providing resources and networking opportunities to their members in areas of their study or expertise. As described in Appendix F, the State Bar has divisions for law students, legal assistants, and legal administrators.

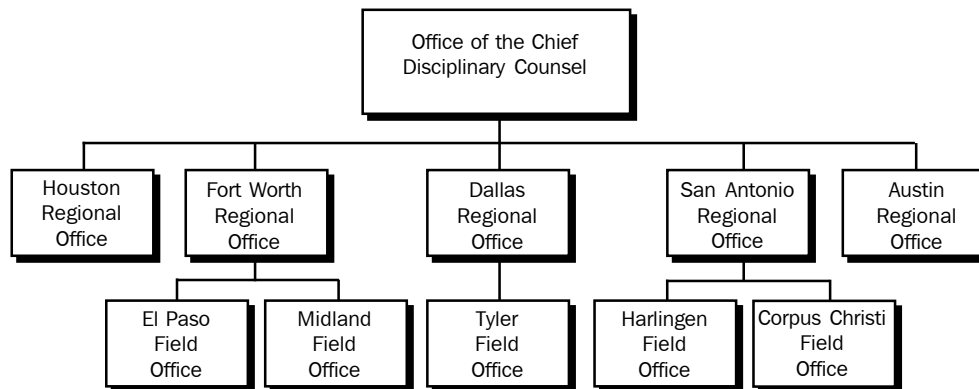
A major activity of the State Bar is its annual meeting, which provides for a general membership meeting, including induction of elected State Bar officers; reports from the State Bar leadership and the courts; annual meetings of most State Bar sections and divisions; and many continuing education opportunities. The annual meeting generally draws 2,300 to 3,200 attorney attendees, depending on the location.

*The State Bar annual meeting draws 2,300 to 3,200 attorney attendees.*

**Staff**

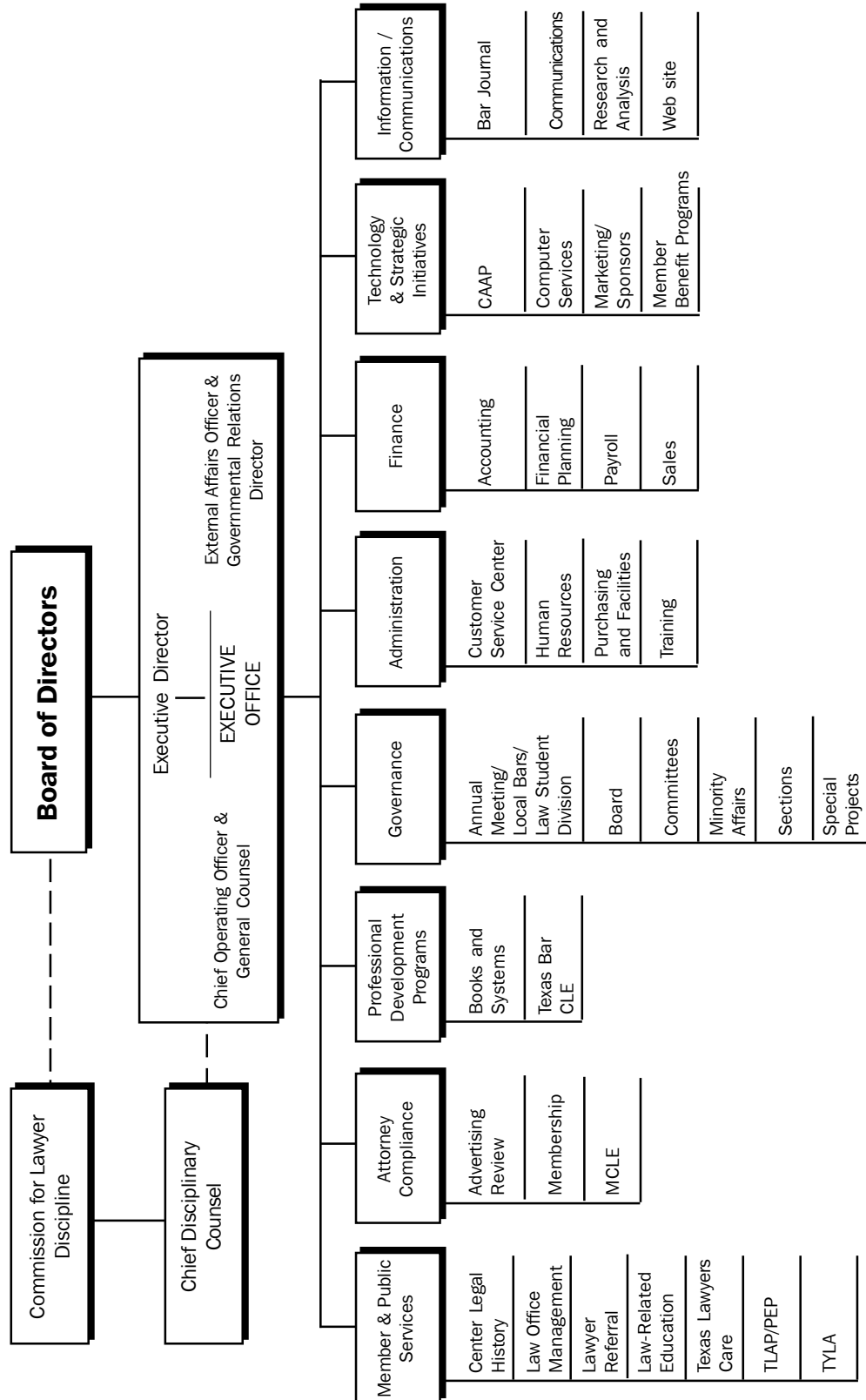
The Executive Director oversees the agency’s operations. *The State Bar of Texas Organizational Chart*, shown on page 52 depicts the organization of the agency. The chart, *The State Bar of Texas Regional and Field Offices*, shows the offices throughout the state where much of the Bar’s disciplinary functions are performed.

**State Bar of Texas  
Regional and Field Offices**



A comparison of the agency’s workforce composition to the minority civilian labor force over the past four years is shown in Appendix G, *Equal Opportunity Employment Statistics – Calendar Years 1998-2001*. The State Bar has generally failed to meet civilian labor force levels for employment of African-Americans. In certain job categories, the State Bar has also fallen below standards in hiring Hispanics and women. However, the State Bar excels in hiring women in professional and administration positions.

# State Bar of Texas Organizational Chart



## Funding

### Revenues

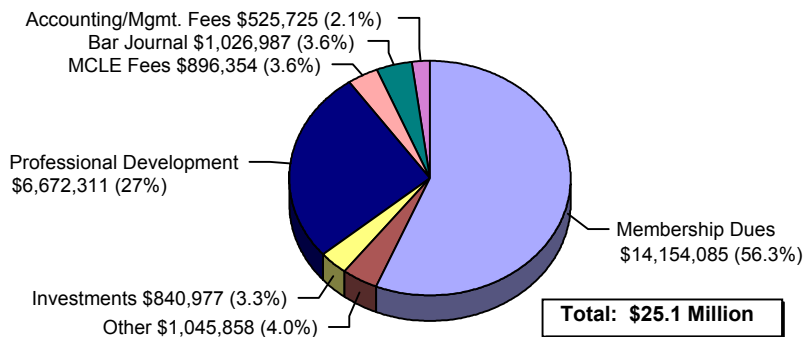
The State Bar annual operating budget for the 2000-2001 fiscal year is approximately \$26 million. The State Bar fiscal year runs from June 1 to May 31. The State Bar receives no appropriations from General Revenue, but is a public corporation funded primarily by lawyers' dues and Professional Development Program fees. Because the agency's funds are not placed in the State Treasury, they are not subject to the legislative appropriations process. The Texas Supreme Court, rather than the Legislature, approves the budget of the State Bar.

*The State Bar receives no appropriations from the State, but is a public corporation funded primarily by lawyers' dues and program fees.*

The pie chart, *Sources of Revenue*, identifies each source of funds for that fiscal year. Membership dues accounted for about \$14 million, or 56.3 percent of the State Bar's income.

The remaining \$11 million came from continuing legal education fees, sales of books and legal forms produced by the State Bar, advertising income from the *Texas Bar Journal*, and other sources including interest income and grants from the Texas Bar Foundation.

**Sources of Revenue  
FY 2000 - 2001**

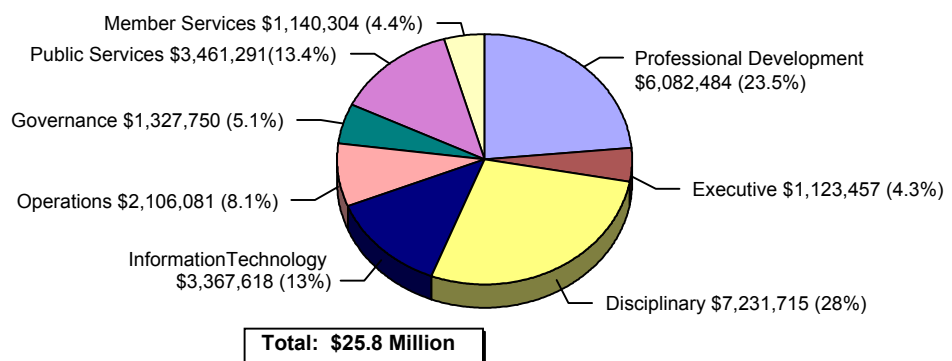


### Expenditures

The agency spent \$25.8 million in fiscal year 2000-2001. The State Bar's budget is divided according to its organizational divisions. The pie chart, *Expenditures by Division*, provides a proportional snapshot of expenditures. The State Bar's disciplinary system is the largest expenditure, representing 28 percent of the total budget.

The State Bar is not subject to state rules regarding purchasing goods and services from Historically Underutilized Businesses.

**Expenditures by Division  
FY 2000 - 2001**



## Agency Operations

The State Bar’s major programs described below fall into three main categories: Public Protection, Professionalism, and Public Service.

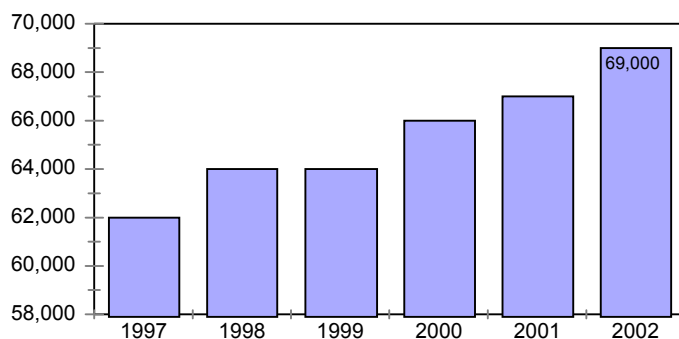
### Public Protection

In regulating the legal profession, the Bar maintains several requirements with which attorneys in Texas must comply to remain in good standing. When attorneys repeatedly have difficulty meeting these requirements, the Bar relies on a disciplinary and disability system. In support of the system, which includes a grievance process, the Bar maintains programs designed to serve attorneys in the system as well as the affected public.

### Attorney Compliance

The requirement of a unified bar is that all licensed attorneys in Texas be members of the State Bar. Currently, the Bar maintains a roster of approximately 70,000 members.

**State Bar Membership  
1997 - 2002**



The graph, *State Bar Membership*, illustrates the steady increase of lawyers licensed in Texas. Members must pay annual dues that range from \$68 to \$235 per year, based on the number of years that the attorney has been licensed.

The Bar also requires that attorneys participate in at least 15 hours of continuing legal education each year. The Bar’s Minimum Continuing Legal Education program (MCLE) monitors attorney CLE

hours and assesses penalty fees for noncompliance and reinstatement.

In an effort to protect the public from deceptive advertising, the Bar also regulates attorneys’ marketing media. Attorneys who advertise their services to the public are required to submit their materials for agency review according to content standards in the Texas Disciplinary Rules of Professional Conduct.

### Attorney Grievance Process

The Bar relies on a disciplinary and disability system to assist the public and deal with lawyers having difficulty meeting standards of professionalism.

The **Chief Disciplinary Counsel** (CDC) administers the State Bar’s disciplinary and disability system. The office of the CDC, which had 106 employees and a \$7.2 million budget in 2000-2001, is headquartered in Austin. Staff also works in four other regional offices

*With an annual budget of \$7.2 million, the Office of the Chief Disciplinary Counsel administers the State Bar’s disciplinary and disability system.*

and five field offices. A map illustrating the regions served by the CDC is provided in Appendix H.

The CDC is appointed by the Commission for Lawyer Discipline (the Commission) with the advice and consent of the Bar's Board of Directors. The textbox, *Commission for Lawyer Discipline*, provides additional information about the Commission.

The State Bar's disciplinary and disability system is guided by the Texas Rules of Disciplinary Procedure, as adopted by the Supreme Court. The rules establish the terms, composition, and method of appointment of members of the Commission; the grievance committees, including investigatory panels and evidentiary panels; and the *Board of Disciplinary Appeals*, which is described in the accompanying textbox of the same name.

#### Commission for Lawyer Discipline

- The Commission, a standing committee of the State Bar, has 12 members serving staggered three-year terms.
- Membership of the Commission is split evenly between lawyers and nonlawyer public members.
- The Supreme Court appoints public members while the President of the State Bar appoints all attorney members.
- The Commission generally acts on behalf of the client in disciplinary and disability proceedings. It is also charged with reporting to the State Bar Board, the Supreme Court, and the Legislature regarding the state of the attorney disciplinary system.

#### Board of Disciplinary Appeals

The Board of Disciplinary Appeals (BODA) is a committee of the Supreme Court, consisting of 12 lawyers appointed by the Supreme Court to provide broad geographic representation. In addition to serving as the intermediate appellate court for evidentiary panel decisions, BODA has final appellate jurisdiction for:

- classification decisions by a CDC investigator that a writing satisfies the requirements of a complaint or should be dismissed as an inquiry; and
- requests for transfers of venue of disciplinary proceedings among grievance committees.

In addition, BODA has original jurisdiction for:

- reciprocal discipline for cases involving conduct that has been sanctioned by another jurisdiction;
- compulsory discipline for the conviction of certain crimes; and
- motions to revoke probation entered by investigatory panels.

The rules also prescribe the process for receiving complaints; determining whether professional misconduct, as defined in the Texas Disciplinary Rules of Professional Conduct, has occurred; and taking appropriate disciplinary action. The table, *Disposition of Grievances — 1998-2001*, shown on the following page, provides data on the volume of grievances filed over that period. As shown, the CDC dismisses a majority of the grievances filed. In fact, the percentage of dismissals has gradually increased from 57 percent in 1994-1995 to 69 percent in 2000-2001.

*The Chief Disciplinary Counsel dismissed 69 percent of all grievances filed in 2000 – 2001.*

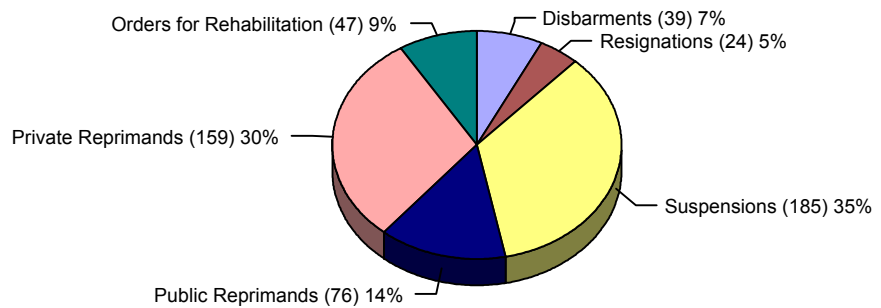
<b>Disposition of Grievances — 1998-2001</b>			
	<b>1998-99</b>	<b>1999-00</b>	<b>2000-01</b>
Total Number of Grievances Filed	9,040	9,430	8,962
Total Number of Disciplinary Sanctions	552	521	530
Disbarments	38	23	39
Resignations	20	22	24
Suspensions	154	162	185
Public Reprimands	89	83	76
Private Reprimands	191	184	159
Orders for Rehabilitation	58	44	47
Other	2	3	0
Total Grievances Dismissed	5,420	6,270	6,209

The pie chart, *Disciplinary Sanctions*, provides another way of looking at disciplinary actions taken by the State Bar. Suspensions and private reprimands are the most common sanctions issued in the grievance system, although many suspensions are probated.

A potential entry point into the Bar disciplinary and disability system is the **Client-Attorney Assistance Program (CAAP)**, which serves as the Grievance Information Hotline. Through the hotline, which fields approximately 100 calls per day, the public and attorneys may access information and forms regarding the attorney grievance process. When appropriate, staff also provide callers with referrals to other Bar

association programs and services, and to those offered by state and local agencies.

**Disciplinary Sanctions  
2000 - 2001**



*The Client Security Fund provides financial relief to individuals who have lost money or property as a result of attorney professional misconduct.*

CAAP is also charged with providing mediation services between clients and their attorneys. The State Bar and the Commission for Lawyer Discipline established CAAP to alleviate workload issues by pre-screening potential complaints, and providing a neutral forum for connecting the public with the most appropriate services and resources for addressing non-grievance level concerns.

The **Client Security Fund (CSF)** provides financial relief to individuals who have lost money, property, or other things of value as result of attorney professional misconduct, disbarment or suspension. The Fund is managed by a seven-member committee of the State Bar Board.

The committee determines if a payment should be made based on the Rules of Procedure of Client Security Fund Proceedings. Claims for



losses based on dishonest conduct are limited to \$30,000. Claims for reimbursement of an unearned fee are limited to 50 percent of the unearned fee, up to \$5,000. In the 2000-2001 fiscal year, the Bar awarded \$492,190 through the CSF program.

### **Attorney Assistance**

The Bar maintains programs to assist lawyers at risk of entering the disciplinary and disability system. These programs attempt to prevent further harm to the public, while addressing the special needs of some attorneys.

The **Professionalism Enhancement Program** (PEP) addresses professionalism issues in lawyer-client, lawyer-lawyer, and lawyer-court relations. Through rehabilitation and prevention, PEP tries to reduce the incidence of unprofessional conduct. PEP seeks to resolve client problems such as poor communication between clients and attorneys, poor law office management skills, and minor neglect. Although the program serves all Texas attorneys, most attorneys who access PEP are referred to the program through the grievance process.

The Commission for Lawyer Discipline employs PEP staff, who work with 17 regional PEP panels appointed from the Grievance Committees. The panels and staff assess an attorney's needs and develop an individual action plan that may require lawyer-to-lawyer assistance, monitoring, ethics or education courses, or professional counseling. In 2000-2001, PEP panels throughout the state dealt with approximately 208 attorneys from the grievance process.

The **Texas Lawyers Assistance Program** (TLAP) addresses the estimated 10,000 to 15,000 attorneys in Texas suffering from alcoholism, chemical dependency, or mental illness. These problems affect professional performance and frequently cause lawyers to end up in the disciplinary system.

With more than 600 volunteers, TLAP provides for the identification, peer intervention, counseling and rehabilitation of law students and Texas attorneys. It also provides 24-hour hotline assistance and referral services and a variety of educational efforts including presentations and print media. Since the program's inception in 1989, TLAP has helped 3,100 attorneys.

*An estimated 10,000 to  
15,000 attorneys in  
Texas suffer from  
alcoholism, chemical  
dependency, or mental  
illness.*

### **Professionalism**

The Bar administers a variety of programs intended to increase the competency of lawyers and the quality of legal service available to the public. These programs include legal education courses, publications, and online services.

*As the largest CLE provider in the state, the Bar delivers 25 percent of all mandatory training hours completed by lawyers each year.*

The State Bar imposes a minimum number of hours that Texas lawyers must spend in continuing legal education (CLE). To assist lawyers in meeting this requirement the **Texas Bar CLE (TBCLE)** provides Texas lawyers with continuing legal education programs, publications, and online services covering more than 25 legal practice areas. TBCLE services are presently accessed by more than 30,000 Texas lawyers in a given year. As the largest CLE provider in the state, TBCLE delivers about 25 percent of the total number of mandatory training hours completed by lawyers each year. In addition to the State Bar, the state has about 10 other major providers operating in the state and hundreds of small providers, from law firms to local bar associations.

For attorneys exceeding minimum CLE requirements, the State Bar supports two organizations affiliated with the Bar. These are described in the textboxes, *State Bar College* and *Texas Board of Legal Specialization*.

<p style="text-align: center;"><b>State Bar College</b></p> <p>Created by the Supreme Court in 1982, the State Bar College exists as an associated board of the State Bar and serves to:</p> <ul style="list-style-type: none"> <li>• recognize attorneys in general practice who voluntarily complete 80 hours of continuing legal education within a three-year period or 45 hours within a one-year period; and</li> <li>• promote continuing legal education by offering Bar College members discounts to Bar sponsored CLE and grants to rural and minority local bar associations for the purpose of presenting additional CLE.</li> </ul> <p>Currently, 4,200 attorneys are members of the State Bar College.</p>	<p style="text-align: center;"><b>Texas Board of Legal Specialization</b></p> <p>Created by the Supreme Court in 1974, the Texas Board of Legal Specialization (TBLS) provides for voluntary specialized certification of attorneys and legal assistants in Texas. Currently, TBLS offers certification in 15 specialty areas for lawyers and six specialty areas for legal assistants.</p> <p>Attorneys and legal assistants wishing to be certified in specific areas of law must have a minimum of 100 hours of continuing legal education within a specialty area over a five-year period and pass both a peer review and a specialization exam. Currently, 7,972 attorneys are board-certified in at least one of the areas of legal specialization.</p>
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The **Law Office Management Program** assists primarily solo and small firm practitioners in developing office processes and procedures for enhanced delivery of legal services. Focusing on management skills, the program addresses common complaints against attorneys including not returning phone calls, missing deadlines, not recognizing conflicts, and poorly trained support staff.

The **Books and Systems Department** publishes and sells edited materials in printed and electronic form that concern legal topics. All publications are written by lawyers, judges, and law professors on a volunteer basis. Bar sections that sponsor projects are paid a royalty of 10 to 15 percent of gross sales.

Through its **Communications Division**, the State Bar produces the *Texas Bar Journal*, the official publication of the State Bar. With a circulation of 82,000, the *Journal* is published monthly and provides legal articles, rules of court, disciplinary information, and other information of interest to the State Bar members. In addition to a general Web site offering Bar information to lawyers and the public, the State Bar maintains a web portal for Texas lawyers. Through the site, MyTexasBar.com, lawyers have access to various tools and resources, including online case law libraries, legal information and news, practice tips, and many other customizable features.

### **Public Service**

In addition to promoting professional competency among lawyers to improve the quality of legal service to the public, and protecting the public from attorney misconduct by administering a disciplinary system, the State Bar also offers direct services to the public. These include educational programs, referral services, and access to justice.

Through its **Law-Related Education Program**, the State Bar serves to advance law-related and civic education programs throughout the state by curriculum development, educator training, and grant administration. Working with the legal community, public and private school districts, universities, and Regional Education Service Centers, the department administers numerous programs designed to improve the administration of justice and promote civic education and participation. Law-Related Education provides inservice programs and institutes that reach more than 2,000 teachers per year and conducts more than 90 training sessions and workshops on a variety law-related topics.

The State Bar of Texas **Lawyer Referral Information Service** helps the public obtain access to local and out-of-state legal representation. In return, attorneys receive a source of client development, pro bono opportunities, and fee-generating cases.

The **Texas Young Lawyers Association (TYLA)** functions as the public service arm of the State Bar. It was established to enhance the practice of law and encourage public service of young or newly-licensed attorneys. Although a department of the State Bar, TYLA is quasi-autonomous with its own board of directors and executive officers. Membership in TYLA consists of all licensed Texas lawyers who are 36 years of age and under, or any lawyer licensed for three years or less. Public service programs include law-focused education curricula, public information pamphlets, senior citizen programs, legal services to the poor, and child support enforcement.

The State Bar supports a number of programs and initiatives focusing on enhancing the quality and accessibility of legal services to low-income

*Direct public services offered by the State Bar include educational programs, referral services, and access to justice initiatives.*

Texans. Some of these programs that function independently of the State Bar are described in the table, *Access to Justice Efforts*. Within the State Bar, the **Texas Lawyers Care** program educates the public about affordable legal representation, coordinates more than 100 different pro bono programs, trains and recruits volunteer attorneys, presents continuing legal education programs on poverty law, and publishes an annual directory and quarterly newsletter regarding legal services to the poor.

<b>Access to Justice Efforts</b>	
Texas Access to Justice Commission	Staff of the State Bar Texas Lawyers Care program support the Texas Access to Justice Commission. In 2001, the Supreme Court established the Commission to provide statewide coordination of efforts that increase access to legal services for low-income Texans.
Texas Equal Access to Justice Foundation	<p>In 1984, the Supreme Court created the Texas Equal Access to Justice Foundation (TEAJF) to administer the Texas Interest on Lawyers' Trust Accounts (IOLTA) Program. All Texas attorneys and law firms receiving client funds that are short-term or nominal in amount are required to place those funds in interest-bearing trust accounts, with the interest payable directly to the TEAJF to fund non-profit organizations that provide free civil legal services to low-income Texans.</p> <p>TEAJF also administers the Basic Civil Legal Services Program. This grant program which also supports civil legal services for low-income Texans is funded by a civil court filing fee. The fee generates approximately \$3 million annually.</p>
Texas Bar Foundation	The Texas Bar Foundation solicits charitable contributions and provides funding to enhance the rule of law and the system of justice in Texas. The Foundation provides grants for activities that relate to the administration of justice; legal ethics; legal education and assistance for the underprivileged; and the encouragement of legal research, publications, and forums.

# **APPENDICES**

## Appendix A

### State Bar Board of Directors

Broadus A. Spivey 2000 – 2003, <i>Elected</i>	<i>President</i> Attorney	Amy Karff Halevy 1999 – 2002, <i>Elected</i>	District 4, Place 2 Attorney
Guy N. Harrison 2001 – 2004, <i>Elected</i>	<i>President-Elect</i> Attorney	Andrew S. Hanen 2000 – 2003, <i>Elected</i>	District 4, Place 5 Attorney
Lynne Liberato 1999 – 2002, <i>Elected</i>	<i>Past President</i> Attorney	Richard S. Hoffman 1999 – 2002, <i>Elected</i>	District 12 Attorney
Vidal G. Martinez 1999 – 2002, <i>Appointed</i>	<i>Chair of the Board</i> Minority Member Attorney	John H. Hofmann 2001 – 2004, <i>Elected</i>	District 15 Attorney
Richard T. Miller 1998 – 2001, <i>Elected</i>	Attorney (Non-voting)	Jarvis V. Hollingsworth 2001 – 2004, <i>Appointed</i>	Minority Member Attorney
Kim J. Askew 2001 – 2004, <i>Elected</i>	District 6, Place 5 Attorney	Elsie L. Huang 1999 - 2002, <i>Appointed</i>	Public Member
W. Mike Baggett 2001 – 2004, <i>Elected</i>	District 6, Place 1 Attorney	Ophelia F. Camina 2002 – 2003, <i>Appointed*</i>	District 6, Place 4 Attorney
Georgina M. Benavides 2000 – 2003, <i>Appointed</i>	Minority Member Attorney	John F. Landgraf 2001 – 2004, <i>Appointed</i>	Public Member
William H. Betts, Jr. 2001 – 2004, <i>Appointed</i>	Section Representative (Non-voting)	Elizabeth Lang-Miers 1999 – 2002, <i>Elected</i>	District 6, Place 2 Attorney
Blair A. Bisbey 2001 – 2004, <i>Elected</i>	District 3 Attorney	Robert Le Boeuf 2000 – 2003, <i>Elected</i>	District 5 Attorney
Dan M. Boulware 2000 – 2003, <i>Elected</i>	District 7, Place 1 Attorney	Melinda C. McMichael, M.D. 2001 – 2004, <i>Appointed*</i>	Public Member
Mina A. Brees 2001 – 2004, <i>Elected</i>	District 9, Place 2 Attorney	Stephen C. Maxwell 2001 – 2004, <i>Elected</i>	District 7, Place 2 Attorney
Ralph Brock 2000 – 2003, <i>Appointed</i>	Section Representative (Non-voting)	John Stanley Mayfield 2000 – 2003, <i>Appointed</i>	Public Member
Jennifer Gibbins Durbin 2001 – 2004, <i>Appointed</i>	District 10, Place 2 Attorney	Amos L. Mazzant 2000 – 2003, <i>Elected</i>	<i>TYLA President</i> Attorney
George Edwards, Jr. 1999 – 2002, <i>Appointed</i>	Public Member	Vicki L. Menard 2000 – 2003, <i>Appointed</i>	Section Representative (Non-voting)
Harper Estes 1999 – 2002, <i>Elected</i>	District 16 Attorney	John H. Miller, Jr. 1999 – 2002, <i>Elected</i>	District 11 Attorney
Angel Z. Fraga 1999 – 2002, <i>Elected</i>	District 4, Place 7 Attorney	Manuel "Manny" Newburger 1999 – 2002, <i>Appointed</i>	Section Representative (Non-voting)
Robert V. Gibson 2001 – 2004, <i>Appointed</i>	Section Representative Member		

## Appendix A

Glenn A. Perry 2001 – 2004, <i>Elected</i>	District 2 Attorney	Dawn Miller Ex Officio	Chief Disciplinary Counsel (Non-voting)
Gary Reaves 1999 – 2002, <i>Elected</i>	District 17 Attorney	Shelby Rogers Ex Officio	General Counsel (Non-voting)
Velva L. Price 2000 – 2003, <i>Appointed</i>	District 9, Place 1 Attorney	Judge Mark D. Atkinson 2001 – 2002	Chair of Judicial Section (Non-voting)
Vacant 2001 – 2004, <i>Elected</i>	District 1 Attorney	Turner W. Branch 2000 – 2003	Out-of-State Lawyer Liaison (Non-voting)
Vianei Lopez Robinson 1999 – 2002, <i>Appointed</i>	Section Representative (Non-voting)	Justice Craig T. Enoch, Term not defined.	Supreme Court Liaison (Non-voting)
Renato Santos, Jr. 2001 – 2004, <i>Appointed</i>	Minority Member Attorney	Judge John H. Hannah, Jr. 2001 – 2002	Federal Judicial Liaison (Non-voting)
Charles W. Schwartz 2000 – 2003, <i>Elected</i>	District 4, Place 6 Attorney	Judge Sharon Keller, Term not defined.	Court of Criminal Appeals Liaison (Non-voting)
Luther H. Soules, III 2000 – 2003, <i>Elected</i>	District 10, Place 1 Attorney		
Sidney Stahl 1999 – 2002, <i>Elected</i>	District 6, Place 3 Attorney		
William Steven Steele 2001 – 2004, <i>Elected</i>	District 8 Attorney		
David W. Stevens 2000 – 2003, <i>Appointed</i>	Public Member		
Andrew Strong 2001 – 2004, <i>Elected</i>	<i>TYLA President-Elect</i> Attorney		
Kent C. Sullivan 1999 – 2002, <i>Elected</i>	District 4, Place 4 Attorney		
Stephen H. Suttle 1999 – 2002, <i>Elected</i>	District 14 Attorney		
Amy Dunn Taylor 2001 – 2004, <i>Elected</i>	District 4, Place 1 Attorney		
D. Gibson Walton 1999 – 2002, <i>Elected</i>	District 4, Place 3 Attorney		
Mark D. White 1999 – 2002, <i>Elected</i>	District 13 Attorney		
Melody M. Wilkinson 1999 – 2002, <i>Elected</i>	<i>TYLA Past President</i> Attorney		
Antonio Alvarado Ex Officio	Executive Director (Non-voting)		
		*Appointed to fill unexpired term	

## Appendix B

### Board of Directors Committees

Name of Committee	Size	Purpose/Duties
Executive Committee	16 full members	To perform between meetings of the Board such functions, consistent with the State Bar Act or State Bar Rules, as the Board may assign to it from time to time. State Bar Board Policy Manual, Section 4.06.01
Administrative Oversight	10 members	Advise and assist the Executive Director in the administrative operation of the State Bar and assist as directed with other projects having an impact on the internal organization of the State Bar. Review proposals, programs, and services for Texas lawyers.
Appeals-Grant Review	7 members	Investigate appeals of decisions rendered by governing bodies of State Bar programs. Evaluates grant applications. If a department, committee, or section of the State Bar is seeking a funding grant from another entity, the committee approves or disapproves the application.
Audit and Finance	11 members	Follow the preparation of the annual budget and report on matters relating to the State Bar's financial condition. Assist in the preparation of a response to the annual State Auditor's report.
Budget	10 members Committee is chaired by president-elect	Advise and assist the Executive Director in preparing the State Bar's annual budget. State Bar Board Policy Manual, Section 4.06.02
Client Security Fund	7 members	Administers the Client Security Fund in accordance with policies adopted by the Board. State Bar Board Policy Manual, Section 5.01
Disciplinary/Disability System Oversight	9 members	Monitor the policies, procedures, and practices of the Chief Disciplinary Counsel's office without violating the confidentiality of the grievance process. Coordinate with the Commission for Lawyer Discipline to ensure successful operation of the disciplinary/disability system. Facilitate the reporting of CDC to the Executive Director of the State Bar on administrative matters. Analyze any proposed revisions to State Bar disciplinary procedures and follow the work of the CLD and the Board of Disciplinary Appeals.
Facilities and Equipment	10 members	Monitor the adequacy of existing facilities and equipment in the Texas Law Center and any leased space outside the Law Center. Consider requests for the purchase of any new equipment or furniture or the acquisition of any new facilities by the State Bar.
Legal Services	12 members	Provide leadership in implementing the three-year goals for legal services to the poor in Texas, report to the Board at regular intervals on that progress, and recommend appropriate amendments to the three-year goals and Board policy. Coordinate with the Texas Equal Access to Justice Commission.



## Appendix B

Name of Committee	Size	Purpose/Duties
Legislative Policy	9 members Board policy requires at least 3 of the 9 members be public members	Draft necessary amendments to the State Bar's legislative guidelines. Analyze proposed legislation for guideline compliance and recommend legislation for State Bar endorsement. State Bar Board Policy Manual, Section 15.02.01
Minority Representation	7 members	Recommend minority Board members as described in the Policy Manual. Explore avenues to increase leadership and involvement by women and minorities in State Bar activities.
New Directors Orientation	7 members	Plan the agenda for and conduct the annual new directors' orientation meeting.
Nominations and Elections	9 members Committee is chaired by the immediate past chair of the Board	Conduct a search for State Bar President-elect nominees. Review guidelines governing the election of President-Elect and monitor the campaign for that office. Recommend action regarding violations of the guidelines. Review State Bar districts to determine whether redistricting is necessary, and make other recommendations pertaining to the general elections of the Bar.
Policy Manual	9 members	Review and prepare revisions, as necessary, to the Board's Policy Manual and bring to the Board's attention any policies or directives that are contradictory to or inconsistent with existing practices.
Professional Development	8 members	Review the proposals of the Professional Development Program and the Books and Systems Department on the basis of cost, value, and economic feasibility and their educational benefit to the State Bar in order to maintain proper fiscal responsibility and direction.
Strategic Planning	10 members	Examine projects and programs of the State Bar to ensure compatibility with the State Bar's strategic plan.
Technology Oversight	8 members	Oversee the State Bar's Business Technology Plan, provide oversight for the Bar's technology-related initiatives and issues, and approve expenditures as authorized by the Board.

## Appendix C

### Standing Committees

Standing committees are established by the Board of Directors upon recommendation of the President-Elect. Committees must adhere to all State Bar rules and any recommendations, actions, or projects of a committee must be approved by the Board of Directors (except for the Commission for Lawyer Discipline). Committee chairs and members are appointed by the President-Elect with members generally serving three-year terms. Committees are not allowed to offer or support legislation.		
Name of Committee	Size	Purpose/Duties
Administration of Rules of Evidence	25 members	To concern itself with monitoring the Code of Evidence and with revisions of the Rules of Evidence and the statutes of Texas relating thereto. Government Code §81.026 Also Article VIII, State Bar Rules.
Advertising Review	12 members	To concern itself with attorney advertising issues and compliance with the Lawyer Advertising Rules, Part VII of the Texas Disciplinary Rules of Professional Conduct, and review all public media advertising and written solicitation communications submitted for review as required by 7.07 of the Rules.
Agricultural Law	24 members	To concern itself with gathering information on the legal aspects of agriculture, evaluating the existing responses of the State Bar to problems of agricultural law, and developing appropriate programs to meet the challenges of agricultural law.
Bar Journal Board of Editors	16 members	To advise and assist the editor of the Texas Bar Journal with matters of policy, content, and substance.
Child Abuse and Neglect	26 members	To concern itself with studying and evaluating child abuse and neglect; defining the legal profession's role in working to ameliorate the problem; mobilizing the legal profession in the fight against child abuse and neglect; educating the public with regard to the legal and social problems connected herewith; and recommending to the Board of Directors of the State Bar any necessary legislation in connection with child abuse and neglect.
Commission for Lawyer Discipline	12 members	The Commission is the client body of the Office of the Chief Disciplinary Counsel in all disciplinary actions. The Commission also reviews the structure, function and effectiveness of the disciplinary and disability procedures. Government Code §81.076
Continuing Legal Education	27 members	To concern itself with monitoring the continuing legal education needs of lawyers and other professionals, reviewing and making recommendations for any mandatory educational requirements for lawyers to maintain professional competence, and promoting appropriate educational programs through the Professional Development Program Department of the State Bar of Texas.

## Appendix C

Name of Committee	Size	Purpose/Duties
Council of Chairs	44 members	The chairs of all sections of the State Bar will meet with the President to discuss items of mutual interest and concerns.
Court Rules	27 members	To concern itself with revisions of the Rules of Practice in civil actions and the statutes of Texas relating thereto, for the purpose of enhancing fairness to the litigants, judicial efficiency and economy, and the reduction of the cost of litigation.
Crime Victims	23 members	To concern itself with the legal problems of victims and witnesses to violent crimes and with possible improvements in the manner in which police and prosecutors deal with victims and witnesses.
Death Penalty Litigation	24 members	To study the problem of obtaining funding and training for attorneys representing death penalty defendants at pre-trial, trial, on appeal, and in post-conviction proceedings; to collect such data and other information relevant to the representation of those persons, and to develop recommendations for actions by the State Bar of Texas, the Texas Legislature and all other entities that are or should be involved in the provision of competent representation to indigent persons charged with capital offenses.
Disability Issues	27 members	To study the concerns of Texas lawyers with disabilities, as well as clients and members of the public, and make recommendations to the Board of Directors of the State Bar of Texas concerning ways in which the role of the disabled in Texas can be enhanced by improvement in programs and initiatives sponsored by the State Bar.
History and Traditions of the Bar and Historical Preservation	24 members	To concern itself with the preservation of the history of the legal profession in Texas, the acquisition and collection by the Bar of documents, artifacts and memorabilia, the appropriate display of acquisitions of such character made to the Bar, and with the laws dealing with preservation of historic sites and objects.
Judiciary Relations	27 members	To identify and implement ways for the Bar to assist the federal courts and state courts in addressing problems and challenges facing the judiciary operating in Texas and to increase opportunities for positive interaction between the judiciary and Texas lawyers.
Jury Service	27 members	To concern itself with improving the manner in which jurors are treated within the judicial process, including compensation; and developing and implementing programs to ensure broad citizen participation in and support for our jury system.

## Appendix C

Name of Committee	Size	Purpose/Duties
Law Focused Education	27 members	To concern itself with developing, implementing and augmenting programs for the education of the public in regard to each citizen's legal rights and responsibilities and the roles of the legal profession and the judiciary in protecting those rights and enforcing those responsibilities, and with encouraging and supporting the programs of Law Focused Education, Inc.
Law Office Management	24 members	To concern itself with: (1) programs, publications, and other activities conducive to the efficient, ethical management of the delivery of legal services; (2) the delivery of legal services at reasonable prices, with sufficient return to ensure the viability of the profession; and (3) increasing the management knowledge and skills of the members of the Bar.
Laws Relating to Immigration and Nationality	27 members	To concern itself with a study of the current or proposed laws pertaining to immigration and nationality, enforcement thereof, the impact upon the public arising from any inadequate or nonenforcement thereof, and make recommendations for any improvements in such laws.
Lawyer Referral and Information Services	27 members	This committee directs the development and practices of the statewide lawyer referral service certification and regulation process. This committee works in cooperation with metropolitan lawyer referral services in facilitating referrals of individuals to attorney members. The committee provides individuals access to legal representation and support services including legal services coordinated by the State Bar of Texas.
Lawyers' Assistance Program	27 members	To provide for identification, peer intervention, counseling, and rehabilitation of attorneys licensed to practice law in Texas whose lives and practices are impaired because of physical or mental illness, including substance abuse, so that they may resume the competent practice of law to not only benefit themselves, but their clients as well.
Legal Aspects of the Arts	21 members	To review and consider the need for making recommendations concerning the laws pertaining to the arts, and to develop continuing education programs on the relationship between the arts and law.
Legal Assistants	23 members	To concern itself with: (1) the gathering of information on the services of legal assistants under the direction and supervision of a licensed attorney; and (2) the evaluation of the development of appropriate policies and programs for use and services provided by legal assistants. The Standing Committee reports to, and acts on behalf of, the State Bar of Texas in the monitoring and oversight of activities of the State Bar's Legal Assistants Division.

## Appendix C

Name of Committee	Size	Purpose/Duties
Legal Services to the Poor in Civil Matters	27 members	To concern itself with creation and means of implementation of programs, such as legal aid or pro bono efforts, and to assure delivery of legal services to persons who are unable to afford counsel to represent them in civil matters. In addition, shall have oversight responsibilities for the Texas Lawyers Care Project. The composition of the committee shall include members of legal aid, legal services and pro bono programs, including at least two directors from Legal Services Corporation field programs.
Legal Services to the Poor in Criminal Matters	27 members	To study the system of defense of indigent persons in criminal law matters in Texas, collect data and other information relevant to their defense, and to develop recommendations for action by the State Bar of Texas, the Texas Legislature, and all other entities that are or should be involved in the provision of quality representation to indigent persons involved in criminal matters.
Local Bar Services	27 members	To concern itself with providing services and information to local and specialty bar associations by serving as a liaison between the State Bar and the local bar associations and aiding local and specialty bar associations in developing and carrying out worthwhile projects through the Awards of Merit Program.
Minimum Continuing Legal Education	11 members	To administer the program of minimum continuing legal education as established by Article XII of the State Bar Rules, formulate rules and regulations not inconsistent with this Article, evaluate through an accreditation system continuing legal education activities applicable to the Rules, and encourage development of high quality continuing legal education activities statewide.
Opportunities for Minorities in the Profession	23 members	To examine the historical and current status of minorities in the profession and to make recommendations to the Board of Directors regarding how the Bar can take action to enhance employment and economic opportunities for minorities in the profession and to increase involvement by minorities in the Bar.
Professionalism	17 members	To identify factors that influence professionalism and to develop and recommend to the State Bar Board ways to improve professionalism with particular attention to the professional development of new lawyers.
Public Affairs	19 members	To concern itself with expanding public understanding including that of all media, of the roles of the lawyers and of the organized Bar in the administration of justice, of the role of the Supreme Court in control and administration of the Judicial Department of government under the Texas Constitution, and of the roles that the media, the Legislature, the courts and the Bar play in following Constitutional mandates of the First and Sixth Amendments to the United States Constitution.

## Appendix C

Name of Committee	Size	Purpose/Duties
Real Estate Forms	27 members	To review and update the <i>Legal Form Manual for Real Estate Transactions</i> .
Section Coordination	7 members	To foster the relationship between the State Bar and its sections, to improve communications, to study issues pertaining to relations between the State Bar and its sections, and to make recommendations to the Board concerning sections.
Section Representatives to the Board	6 members	To interact with State Bar Board of Directors to address issues of concern between the Bar and sections.
Texas Disciplinary Rules of Professional Conduct	27 members	To evaluate the Texas Disciplinary Rules of Professional Conduct and make suggestions to the Board of Directors of the State Bar concerning revisions that may be appropriate.
Texas Real Estate Broker-Lawyer	12 members	To perform duties imposed by the Real Estate License Act, Vernon's Ann.Civ.St. Article 6573a, Section 16.
Women in the Profession	27 members	To assess the status of women in the legal profession; to identify barriers that prevent women lawyers from full participation in the work, responsibilities and rewards of the profession; to develop educational programs and materials to address discrimination against women lawyers; and to make recommendations to the board of directors of the State Bar for action to address problems identified by the committee.



## Appendix D

### Special Committees

Special Committees are generally created by the Board, either on its own or at the urging of the President. These committees have a set time period with specifically defined objectives, powers, and duties. Special committees may be re-established by board vote each year.

Name of Committee	Size	Purpose/Duties
Annual Meeting	28 members	To concern itself with the planning of the Annual State Bar meeting.
Pattern Jury Charges - Business, Consumer, and Employment	21 members	To prepare and periodically revise pattern jury charges for common law and statutory claims encountered in consumer insurance, business, commercial, and employment litigation.
Pattern Jury Charges - Civil	12 members	To act as an oversight and coordinating committee for Business & Consumer, Family, General Negligence & Motor Vehicles and Malpractice, Premises & Products Committee (formerly PJC. I, III, IV and V Committees), and to concern itself with the study and formulation of the form of charges submitted on civil cases for publication through the Books and Systems Department.
Pattern Jury Charges - Family	17 members	To monitor statutory and case law developments in family law and prepare supplementation as needed for Pattern Jury Charges - Family.
Pattern Jury Charges - General Negligence & Motor Vehicles	18 members	To monitor statutory and case law developments in the subject matter of this PJC volume and prepare supplementation as needed.
Pattern Jury Charges - Malpractice, Premises, and Products	16 members	To monitor statutory and case law developments in the subject matters of this PJC volume and prepare supplementation as needed for Pattern Jury Charges - Malpractice, Premises & Products.
Technology Advisory Committee	10 members	The Technology Advisory Committee, which is comprised of board and non-board members, investigates, evaluates, and makes recommendations to the Board and the Executive Director concerning the use and implementation of technology by the State Bar.





## Appendix E

### Sections of the State Bar

<p>Sections are composed of lawyers who practice in specialized fields of law or who otherwise have common professional interests. Sections are created by the Board of Directors and must comply with State Bar rules and regulations. Unlike committees, sections establish bylaws and collect voluntary membership dues and then govern the expenditure of that dues income, subject to Bar financial compliance rules. The legal basis for all sections is Government Code §81.026.</p>		
Name of Section	Size	Purpose/Duties
Administrative and Public Law	13 on council 1,770 total members	Enhances the roles and skills of attorneys employed by, or practicing law before state agencies, instrumentalities, or bodies. Publishes newsletter; sponsors institutes.
African-American Lawyers	14 on council 372 total members	Promotes the inclusion objectives of the State Bar of Texas as they relate to African-American attorneys, both in the profession and within the State Bar.
Alternative Dispute Resolution	17 on council 1,465 total members	Concerns itself with studying proposals for alternative, simplified methods of dispute resolution.
American Indian Law	12 on council 150 total members	Advocates the common professional interest of Native American lawyers and those having an interest in Native American law in Texas. In addition, the section seeks to promote Native American issues on both public and private forums throughout the state of Texas.
Animal Law	11 on council 321 total members	Promotes and assists attorneys in the study of laws, regulations, and court decisions dealing with legal issues involving animals, and to promote a forum for attorneys to consider and discuss legal issues involved in human beings' coexistence with animals. It is not the purpose of the section to promote moral or ethical issues involving animal rights.
Antitrust/Business Litigation	17 on council 1,358 total members	Promotes the objectives of the State Bar in the field of antitrust and trade regulation. Publishes quarterly newsletter; sponsors institutes.
Appellate	15 on council 1,641 total members	Enhances the roles and skills of attorneys who are engaged in appellate practice through study, continuing legal education, and the dissemination of materials on matters of interest and concern to the membership.
Asian Pacific Islander Interest	9 on council 156 total members	Advocates the common professional interest of lawyers of Asian-Pacific Islander heritage and those having an interest in the affairs of the Asian community and the law of countries on the Pacific rim. Promotes business relations and trade with Asian clients.
Aviation Law	11 on council 272 total members	Promotes the objectives of the State Bar of Texas and the interest of its members concerning all phases of aviation and space law, to monitor and study aviation legal issues, and to comment and make recommendations.

## Appendix E

Name of Section	Size	Purpose/Duties
Business Law	14 on council 4,116 total members	Covers the complex and expanding fields of corporate, securities, commercial, banking and bankruptcy law. Publishes quarterly newsletter; sponsors institutes; distributes other publications.
Computer Section	10 on council 1,266 total members	Educates and involves the legal profession about/in the use of laws applicable to computer and information technology.
Construction Law	13 on council 1,250 total members	Promotes the objectives of the State Bar of Texas within the field of construction.
Consumer Law	21 on council 1,665 total members	Studies and reports on the volume of law related to consumer litigation and consumer rights and protection. Publishes quarterly newsletter, <i>Journal of Texas Consumer Law</i> ; sponsors institutes.
Corporate Counsel	10 on council 3,077 total members	Provides a forum for presentation of educational projects and discussion of problems common to lawyers primarily engaged in representing corporations. Publishes quarterly newsletter; sponsors institutes.
Criminal Justice	14 on council 1,877 total members	Concerns itself with law enforcement and substantive and procedural criminal law. Sponsors annual institutes at the State Bar Annual Meeting and throughout the year; publishes newsletter.
Entertainment and Sports Law	11 on council 513 total members	Shall concern itself with gathering information on the legal aspects of entertainment and sports law, evaluating the existing responses of the State Bar to problems of entertainment and sports law, and developing appropriate programs to meet the present and future challenges of entertainment and sports law.
Environmental and Natural Resources	15 on council 1,504 total members	Promotes the objectives of the State Bar within the area of gathering, improving, and distributing a more thorough and greater knowledge of the rapidly developing law of environmental management, control, and enhancement. Publishes newsletter; sponsors institutes.
Family Law	29 on council 3,991 total members	Studies administration of justice in the field of family law; sponsors continuing legal education programs, distributes findings through quarterly newsletter and other educational materials.
General Practice, Solo, and Small Firm	19 on council 2,192 total members	Enhances the roles and skills of the general practitioner through publications, meetings, seminars and committees. Publishes semi-annual newsletter; sponsors institutes.
Government Lawyers	15 on council 712 total members	To enhance the roles and skills of lawyers who are employed by federal, state, and local governments and are concerned with providing services to the public generally rather than to a single client.

## Appendix E

Name of Section	Size	Purpose/Duties
Health Law	13 on council 1,469 total members	Concentrates on legal problems and interdependent relationships of providers and recipients of health care, and the parties financially responsible for such matters. Publishes quarterly newsletter.
Hispanic Issues	12 on council 362 total members	Studies and reports on laws, decisions, and governmental regulations affecting the need of the Spanish-speaking community of Texas and provides a common meeting ground and forum for members of the profession. Publishes newsletter.
Individual Rights and Responsibilities	9 on council 233 total members	Discussion and education of fundamental rights and individual liberties guaranteed by the Constitution and the roles of the lawyer in resisting erosion of individual rights and liberties.
Insurance Law	11 on council 1,240 total members	To have a bi-partisan focus, balancing the interest of both policy holder and lawyers and insurance company lawyers.
Intellectual Property Law	11 on council 1,962 total members	Concerned with the statutes, common law, and provisions of international treaties governing intellectual property rights. Members are involved in the analysis and consideration of various legislative proposals and federal patent, trademark, and copyright policy. Publishes newsletter, sponsors institutes.
International Law	17 on council 1,079 total members	Provides information to section members on all prospects of international law, focusing on private international law and international business transactions. Conducts educational programs; sponsors institutes.
James C. Watson Inn	15 on council 131 total members	Membership is open only to former officers and directors of the State Bar. Promotes the objectives of the State Bar.
Judicial	14 on board of directors 1,091 total members	Promotes the objectives of the State Bar of Texas within the particular field designated by the name of the section, and to that end to take such action as may be appropriate thereto subject to the bylaws of this section, the constitution, and the bylaws of the State Bar of Texas.
Justice of the Peace	1 on council 95 total members	Provides a forum for the interchange of matters of legal importance among other courts of limited jurisdiction, and to cooperate closely with the State Bar of Texas and other professional organizations in developing, supporting, and promoting legal and professional activities affecting justice of the peace courts.
Juvenile Law	14 on council 726 total members	Promotes and improves the administration of justice in the field of juvenile law by study, conferences, publication of reports and articles with respect to both legislation and administration and to that end to take such action as may be appropriate.

## Appendix E

Name of Section	Size	Purpose/Duties
Labor and Employment Law	14 on council 3,135 total members	Studies and reports on laws, decisions and governmental regulations affecting labor relations, and defines responsibilities of labor and industry. Publishes semi-annual newsletter; sponsors institutes.
Litigation	19 on council 8,161 total members	Addresses itself to the interests and opinions of the trial practitioner who concentrates on general civil litigation without limitation to a substantive area. Publishes quarterly newsletter, <i>The Advocate</i> .
Military Law	10 on council 235 total members	Acts as liaison between the Armed Forces and the attorneys of Texas in order to better serve the legal needs of members of the Armed Forces. Publishes annual report; sponsors institutes.
Municipal Judges	13 on council 310 total members	Promotes legal and professional activities affecting municipal and corporation courts; promotes interchange of ideas among other courts of limited jurisdiction. Sponsors institutes.
Oil, Gas, and Energy Resources	15 on council 2,146 total members	Deals with legal aspects of oil, gas, and mineral law. Its objectives are to monitor and keep its members informed of developing trends, current court decisions, and statutes. Publishes a quarterly newsletter; sponsors institutes.
Public Utility Law	6 on council 477 total members	Studies and reports on laws, decisions, governmental regulations, and proposed legislation affecting public utilities; proposes appropriate new legislation in the area. Publishes newsletter semi-annually.
Real Estate, Probate, and Trust	16 on council 6,724 total members	Promotes the objectives of the State Bar within the field of real estate, probate, and trust law. Publishes quarterly newsletter; sponsors institutes.
School Law	11 on council 659 total members	Gathers, improves and analyzes laws as related to public and private schools with similar committees and sections nationwide. Participates in conducting seminars.
Sexual Orientation and Gender Identification Issues	9 on council 289 total members	To promote and study the laws pertaining to gays, lesbians, bisexuals, and transgendered identified persons as well as persons living with HIV.
Taxation Law	14 on council 1,760 total members	Deals with federal and state tax matters. Sponsors liaison meetings with federal and state taxing officials. Reviews and comments upon governmental regulations and proposed legislation. Publishes quarterly newsletter; sponsors institutes.
Women and the Law	13 on council 576 total members	Encourages and facilitates active and effective participation of women in the legal profession and community; addresses the current needs of and issues affecting women.

## Appendix F

### Divisions of the State Bar

The State Bar allows the Board to establish and maintain divisions of lay persons who study law or who work with lawyers for the purpose of promoting the objectives of the State Bar within the areas of their study or expertise.		
Name of Division	Size	Purpose/Duties
Law Student Division	9 on council 935 total members	Enhances law students' participation in the administration of justice, professional responsibility, and public service in cooperation with the Texas Young Lawyers Association and the State Bar.
Legal Administrators Division	1 on council 68 total members	The purposes of the division shall be those specified in the bylaws of the national association and the bylaws of the State Bar.
Legal Assistants Division	19 on council 2,001 total members	Enhances legal assistants' participation in the administration of justice, professional responsibility, and public service in cooperation with the State Bar.



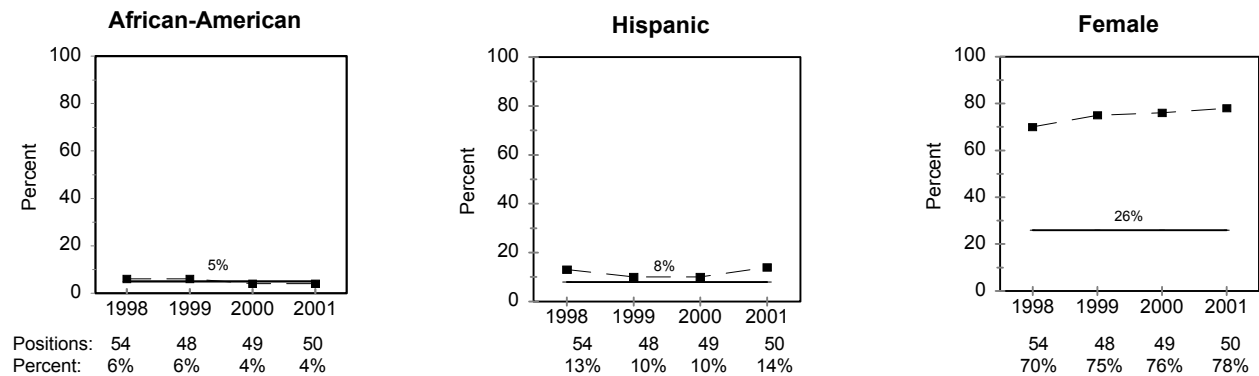
## Appendix G

### Equal Employment Opportunity Statistics

#### 1998 to 2001

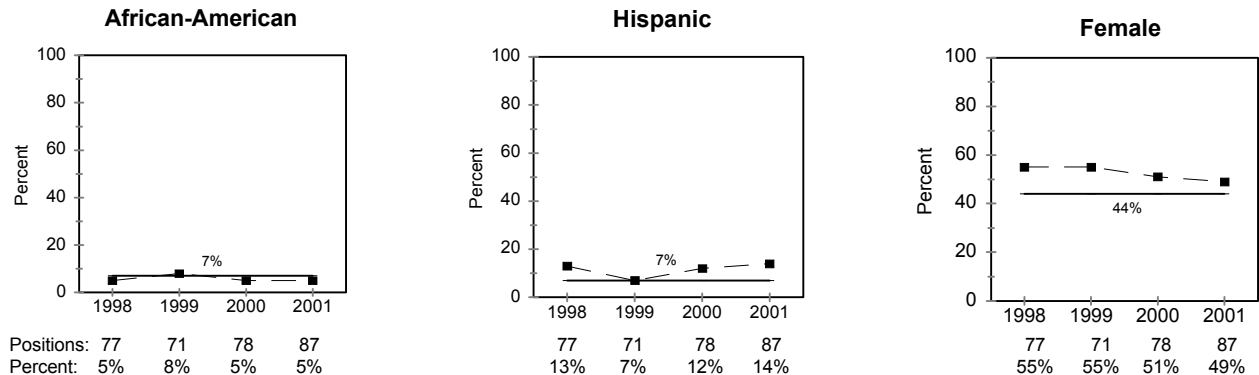
In accordance with the requirements of the Sunset Act, the following material shows trend information for the agency's employment of minorities and females in all applicable categories.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Commission on Human Rights.<sup>2</sup> In the charts, the flat lines represent the percentages of the statewide civilian labor force that African-Americans, Hispanics, and females comprise in each job category. These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The dashed lines represent the agency's actual employment percentages in each job category from 1998 to 2001. The Bar does not employ persons in some job categories – skilled craft, and protective services. In FY 2001, the Board employed 290 FTEs.

#### State Agency Administration



The State Bar generally meets or exceeds civilian labor force standards for African-American, Hispanic, and women employed in this category. In particular, women and Hispanics are well represented with the number of women three times greater than the civilian labor force average.

#### Professional

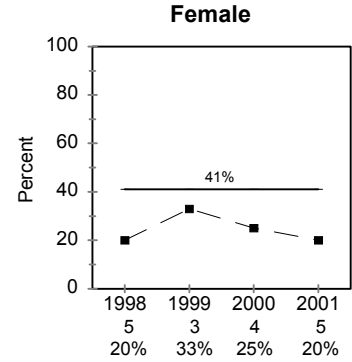
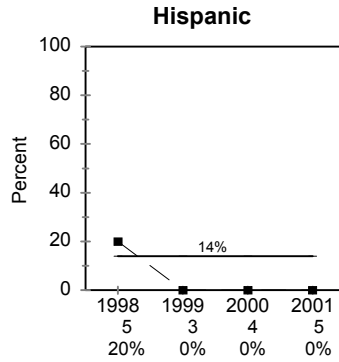
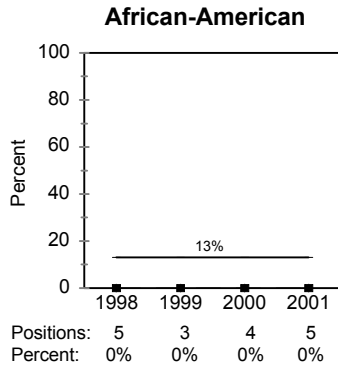


The State Bar's employment of African-Americans in professional positions falls just below the civilian labor force standard. However, Hispanics exceed the standard and women are well represented in this category.



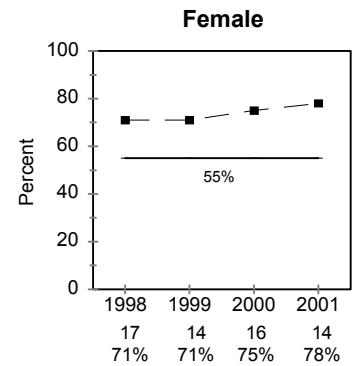
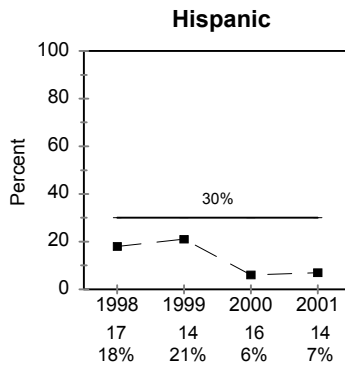
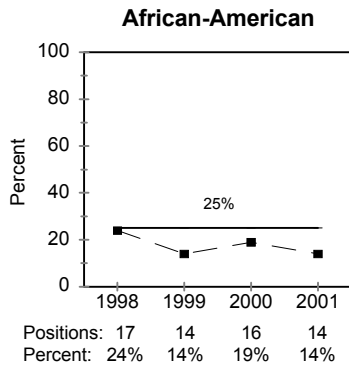
## Appendix G

### Technical



The State Bar falls significantly below civilian labor force averages for African-Americans, Hispanics and women employed in technical positions. However, the State Bar has only employed an average of four individuals in this category.

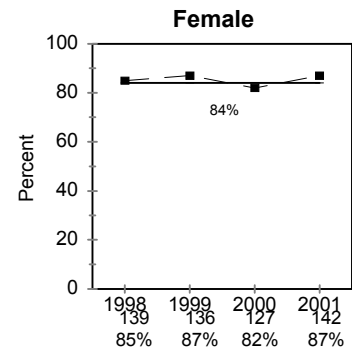
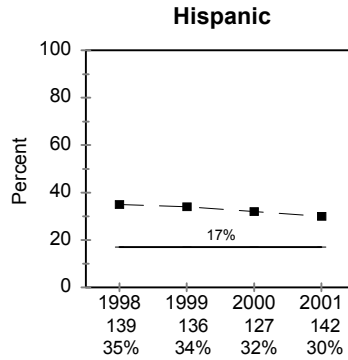
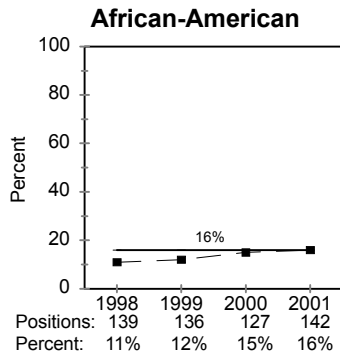
### Para-Professional Support



Generally, the State Bar employs one and a half times more women in para-professional positions than the civilian labor force average. However, the State Bar falls below the average in its employment of African-Americans and Hispanics.

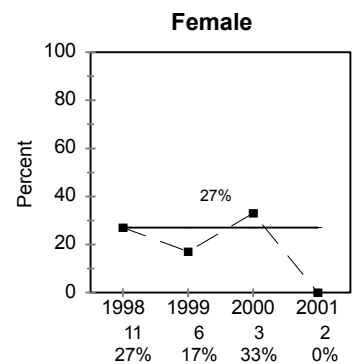
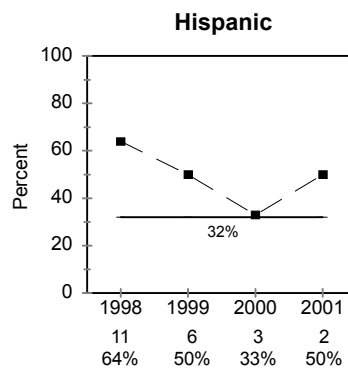
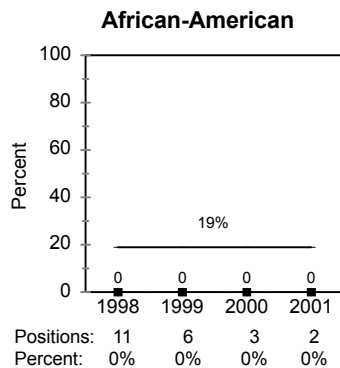
## Appendix G

### Administrative Support



The State Bar generally meets civilian labor force standards in employing minorities and women in administrative support positions. In particular, the State Bar employs about twice as many Hispanics as the standard.

### Service



The number of individuals employed by the State Bar in service and maintenance positions has dropped from 11 in 1998 to two in 2001. Given this, the State Bar has consistently not met civilian labor force standards for African Americans. On occasion, it has also fallen below the average in its employment of women in this category.

<sup>1</sup> Texas Government Code Ann., ch. 325, sec. 325.011(9)(A).

<sup>2</sup> Texas Labor Code Ann., ch. 21, sec. 21.501



# Appendix H

## State Bar of Texas

### Office of Chief Disciplinary Counsel

### Regional Map





## Appendix I

### Staff Review Activities

The Sunset staff engaged in the following activities during the review of the State Bar of Texas.

- Worked with Bar staff throughout the agency's programs. Specifically, staff met with Professionalism Enhancement Program coordinators and panelists, the Advertising Review program director, numerous Texas Young Lawyers Association representatives, the Client Attorney Assistance Program director, and Law Office Management Program coordinators and recipients.
- Attended a Law-Related Education conference, a Law Office Management Program seminar sponsored by the North Texas Business Development Center, and a continuing law education course sponsored by TexasBar CLE.
- Attended a State Bar Board meeting and met individually with various leaders of the Bar, including lawyer and nonlawyer board members, past and present presidents of the Bar, past and present chairs of the Board, and the Bar's Supreme Court liaison.
- Attended numerous meetings of State Bar committees, including the State Bar Executive Committee, Strategic Planning Committee, Council of Chairs, Appeals-Grant Review Committee, and the Client Security Fund Committee. Staff also conducted interviews with chairs of the Advertising Review Committee, the State Bar Budget Committee, and the Audit and Finance Committee.
- Researched various components of the State Bar Disciplinary System including attending a Commission for Lawyer Discipline (CLD) meeting, investigatory hearings, an evidentiary hearing, and a hearing of the Board of Disciplinary Appeals. Attended a Texas Disciplinary Rules of Professional Conduct Committee meeting and met with the chair and vice chair. Staff also interviewed a CLD public member, the past chair of CLD, and the Chief Disciplinary Counsel.
- Met with disciplinary staff of regional offices in San Antonio, Austin, Fort Worth and Dallas.
- Met with representatives of local bar associations including the Tarrant County Bar Association, the Dallas Bar Association, and the San Antonio Bar Association. Also, reviewed a written survey response from the Harris County Bar Association.
- Researched activities concerning legal services to the poor by attending meetings of the Texas Equal Access to Justice Commission and the Texas Bar Foundation Board Trustees, meeting with legal services programs in Dallas and San Antonio, and interviewing the Lawyer Referral Information Service program director, and the Chair of the Legal Services Board Committee.
- Surveyed attorneys, complainants and respondents and spoke with numerous interest groups.
- Researched and surveyed other state bars with similar programs and functions.
- Reviewed past legislation, including results of two previous Sunset reviews.
- Reviewed State Bar financial and internal audit reports.



**SUNSET REVIEW OF THE  
STATE BAR OF TEXAS**

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