



The Supreme Court of Texas

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Chambers of
THE CHIEF JUSTICE

June 22, 2016

Sunset Advisory Commission
1501 North Congress Avenue, 6th Floor
Robert E. Johnson Building
Austin, TX 78701

Re: Staff Report on the State Bar of Texas
and the Board of Law Examiners

Dear Commission Members:

I have read the Staff Report on the State Bar of Texas and the Board of Law Examiners and generally agree with its findings, analyses, and recommendations. It is in my view a thorough, balanced, and well-considered report.

The Staff Report's first recommendation for the State Bar is that the statutory referendum procedure for adoption of rules governing the operation of the State Bar and the conduct of the legal profession be replaced with a rulemaking process administered by the Supreme Court. The Court has always had inherent power to administer the Third Branch. Article V, § 31 of the Texas Constitution, adopted in 1985, requires the Court to promulgate rules "necessary for the efficient and uniform administration of justice", as well as rules of civil procedure, and authorizes the Legislature to delegate other rulemaking responsibility to the Court. Section 74.024(a) of the Government Code authorizes the Court to "adopt rules of administration setting policies and guidelines necessary or desirable for the operation and maintenance of the court system and for the efficient administration of justice. For 77 years, the Court has had broad statutory authority to adopt rules of practice and procedure in civil cases. The Court's power to administer the justice system is thus constitutional, statutory, and inherent.

For the past 27 years, the Court has assigned me the responsibility for overseeing rulemaking. Much of the work is done through the Supreme Court Advisory Committee, first appointed by the Court in 1939 to carry out the adoption of the Rules

of Civil Procedure required by the Rules of Practice Act. The Committee is currently a diverse group of about 50 judges, practicing lawyers, and academics. Other rules work is done by the Texas Judicial Council, the statutory policy-making body for the Judiciary. The Council has 22 members: two from each of six levels of courts, two members of the Senate and two members of the House, and three lawyers and three non-lawyers appointed by the Governor. Still other work is done in conjunction with the State Bar and various groups assigned to study aspects of the justice system. Full participation by stakeholders and the public is encouraged. The Court accepts rules proposals not only from members of the legal profession but from the general public through its Rules Attorney. The Court invites thorough debate of all proposals by lawyers and all interested persons. Rules recommendations are always discussed in detail by the full Court before they are adopted, and public comment is requested. Changes are often made in response to comments.

I agree with the Staff Report that this long-established, public, responsive, transparent, highly regarded, professional process would better serve the State Bar and the legal profession than the current referendum procedure, which is expensive and lethargic. The Staff Report's review and criticism of the referendum is honest and fair. Its failures have been expensive not only monetarily but in blocking needed reforms in rules governing the profession. These rules are critical to lawyers' accountability to each other and to the public. The Court's rulemaking process, with appropriate statutory guidance, would provide the public greater confidence in the integrity of the profession's self-regulation while assuring the profession's full voice in the conduct of the practice of law.

The Staff Report's second and third issues relate to the State Bar's attorney discipline system. The grievance process works very hard to ensure both that lawyers are properly held to high standards of professional conduct and that they are treated fairly in disciplinary proceedings. The Supreme Court has long had a Grievance Oversight Committee responsible for investigating complaints about the State Bar's discipline system and recommending to the Court changes in its operation. The Committee makes it possible for the Court to more carefully monitor the grievance process. We are proud of the hard work and devotion of the people involved. The Staff Report's recommendations for improvements in the grievance process are constructive and welcome.

The Staff Report's recommendations relating to the Board of Law Examiners are likewise well-taken. The education and licensing standards for admission to the practice of law are a topic of discussion throughout the country. These matters are of particular concern to me with today's pressing need for lawyers able to represent the

very poor as well as clients of modest means. The Supreme Court will soon appoint a task force to thoroughly review these issues. The Board of Law Examiners is of critical assistance to the Supreme Court in these areas.

I agree with the Staff Report that the State Bar and the Board of Law Examiners should continue.

Thank you for your invitation to respond to the Staff Report.

Sincerely,

A handwritten signature in black ink, appearing to read "Nathan L. Hecht". The signature is written in a cursive style with a long horizontal stroke at the end.

Nathan L. Hecht
Chief Justice