
The Grievance Oversight Committee
Appointed by
The Supreme Court of Texas

Biennial Report
June 1, 2014

Members
2012 -2014

Stan Serwatka, El Paso, Chair
Demetrius Bivins, Houston, Vice-Chair
Robert W. Alcorn, Dallas
Kelly Benzon, Austin
Faye M. Bracey, San Antonio
Joey Gonzalez, Edinburg
Charles Herring, Jr., Austin
Judy Sebesta, Dallas
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STAN SERWATKA

VICECHAIR
DEMETRIUS BIVINS

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June 1, 2014

To: The Honorable Chief Justice and Justices of the Supreme Court of Texas

On behalf of the Grievance Oversight Committee, I am pleased to submit the Committee's 2014 Report in accordance with this Honorable Court's Order Reconstituting the Grievance Oversight Committee, Misc. Docket No. 11-9003 and the Amended Order Regarding Grievance Oversight Committee, Misc. Docket No. 12-9010.

The Committee again traveled across the State to solicit and obtain input about the grievance system. The GOC continues to believe nothing can replace local visits in order to understand fully the processes that are working and those that need improvement. Our visits since our June 2012 Biennial Report included the following locations: San Antonio, Austin, Galveston, Waco, El Paso, McAllen, Dallas, and Houston. We visited with members of the judiciary, the public, public interest groups, respondents' counsel, and representatives of the men and women who work in the grievance system.

I want to express our thanks for the opportunity to serve the Court, the citizens of Texas, and the legal profession. The GOC will be available to discuss this report with the Court, or answer any questions the Court might have concerning our comments and recommendations. Thank you for the privilege of serving the Court in this important undertaking.

Respectfully submitted,

Stan Serwatka
Attorney Member
Chair, 2013-2014

cc:

Lisa Tatum, President, State Bar of Texas
Trey Apffel, President-elect, State Bar of Texas
Cindy Tisdale, Chair of the State Bar of Texas Board of Directors
Guy Harrison, Chair, Commission for Lawyer Discipline
Linda Acevedo, Chief Disciplinary Counsel
JoAl Cannon Sheridan, Chair, Board of Disciplinary Appeals
David Whittlesey, Chair, State Bar Board Discipline/CAAP Committee

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GRIEVANCE OVERSIGHT COMMITTEE

JUNE 2014 REPORT

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2014 REPORT TO THE SUPREME COURT OF TEXAS

By The GRIEVANCE OVERSIGHT COMMITTEE

History and Scope of the Report:

The Grievance Oversight Committee (the "Committee" or "GOC") hereby submits its 2014 Report as ordered by the Texas Supreme Court. The history of the Committee is detailed in our 2007 Report. Additionally, the Texas Supreme Court's Amended Order Reconstituting the Grievance Oversight Committee, dated February 22, 2011, Misc. Docket No. 11-9003, revised the terms of Committee members. The Court's Amended Order Regarding Grievance Oversight Committee, dated January 24, 2012, Misc. Docket No. 12-9010, revised the annual reporting to biennially in even-numbered years.

During the year, the Committee travels across Texas to meet with local and State Bar leaders, grievance system volunteers, judges, and the public. It is an intense process that requires each member to draw on his or her substantial experience in the grievance system to question and evaluate the answers and comments we receive. In addition, the GOC reviews reports submitted by various grievance system entities and asks hard and relevant questions. The GOC is not an audit committee and has no regulatory oversight authority.

Throughout this process, the GOC continues to find that the dialogue that results from its reports encourages improvement of the grievance system. The Committee's goal is to ask challenging questions and evaluate the answers we receive and then report on what we see and hear to our one constituent, the Supreme Court of Texas. The Court has the ultimate responsibility to administer the grievance system. Our responsibility is to evaluate what we see and hear, comment, and suggest recommendations to the Court based on this constant review of the grievance system. The Committee appreciates the opportunity to provide input to the Court as it administers the grievance system.

Barratry

The GOC's 2012 Report noted the difficulties in pursuing disciplinary cases for barratry—and how rarely those cases have been prosecuted in the past. The Report also noted that the civil-barratry remedies enacted by the Texas Legislature in 2011 substantially raised the profile of barratry. The GOC has received anecdotal reports from several sources concerning the increasing number of those civil claims.

In 2013, the Texas Legislature again amended the civil-barratry remedies provided in Texas Government Code §§ 82.065 and 82.0651. The 2013 statutory amendments extended the remedies to clients—in addition to the remedies provided to non-clients in 2011. However, the 2013 changes also restricted the actionable categories of criminal barratry. For example, the amended statute removed Texas Penal Code §38.12(d) violations from the actionable civil-barratry remedies.

Also noteworthy in 2013 was one of the highest profile criminal and disciplinary barratry prosecutions in the State's history. A grand jury in Montgomery County indicted State Representative Ronald Reynolds and several other defendants for criminal barratry. The Montgomery County District Attorney's office recently informed the GOC that five of the seven defendants in that case have pleaded guilty. At this writing, the criminal case against Mr. Reynolds remains pending. The GOC, of course, expresses no opinion concerning the merits of that case. However, as recently as 1994, a Texas law review article had observed that “no Texas lawyer has been convicted under the 118-year-old [criminal barratry] law.”¹ Additionally, the GOC notes that the Commission for Lawyer Discipline also has filed a disciplinary case against Mr. Reynolds based upon those barratry allegations.

Nonetheless, the difficulties of proof in a “closed loop” crime such as classic paid-runners barratry remain daunting. The GOC received input from Lynne Parsons, the Chief of the Major Fraud Division of the Harris County District Attorney's office. She confirmed both that office's willingness to prosecute viable criminal cases and the difficulties in developing provable cases, including: the complexity of the criminal statute (Tex. Penal Code § 38.12); the sophistication of possible lawyer-targets; the reluctance of potential witnesses (e.g., paid case runners, who themselves have criminal culpability); and the difficulty of obtaining documentary evidence (e.g., most payments are in cash).

While some jurisdictions have abolished the crime of barratry, the longstanding prohibition in Texas currently appears to have more vitality than ever before.

Recommendations:

As stated in our 2012 Report, the Committee again concludes that monitoring the enforcement and effects of the new civil remedies and encouraging the continued and enhanced coordination of existing prosecutorial resources is desirable. Further, we recommend that the CDC continue to

¹ Katherine A. Laroe, *Much Ado About Barratry: State Regulation of Attorneys' Targeted Direct-Mail Solicitation*, 25St. Mary's L.J. 1513, 1524 (1994).

coordinate with the White Collar Crime division in the Texas Attorney General's office to attempt to track and report annually the number of barratry prosecutions undertaken across the State, the types of barratry prosecutions (e.g., attorneys, chiropractors, bail bondsman), and the number of successful prosecutions. The CDC should establish a process to coordinate with local, state, and federal law enforcement agencies to assist in barratry prosecutions and to investigate the feasibility of undercover operations to enforce criminal and disciplinary prohibitions against barratry. The CDC should also monitor the effects of the enforcement of the new civil remedies for barratry.

Ombudsman and/or Special Administrative Counsel

The GOC addressed the office of Ombudsman in its 2010 and 2011 Reports. Previously, the Office of Chief Disciplinary Counsel (CDC) employed and supervised the position of Ombudsman. The Ombudsman worked for and reported to the CDC, but also had responsibility for investigating calls and inquiries from complainants who were dissatisfied with the CDC's processing of their grievances. Because of issues concerning the objectivity and independence of the Ombudsman, the GOC recommended that the office be reorganized.

The CDC recently reported to the GOC that the CDC had restructured the position by eliminating the title "Ombudsman" because the CDC had concluded that that job title might imply a degree of independence and separation from CDC that could be misleading or confusing. The CDC still has the same staff person performing the valuable function of investigating complainants' questions after dismissal of a complaint. The current title for the person performing that function is Special Administrative Counsel. The GOC agrees that that change helps eliminate possible misimpression or confusion created by the previous title of Ombudsman. However, under the current structure, no one outside the system is investigating calls and inquiries by complainants dissatisfied with the process. The GOC has received substantial input concerning the negative reactions of disciplinary complainants whose grievances are dismissed and who then do not understand what happened or why. Not surprisingly, those complainants tend to have a very negative impression concerning the disciplinary system.

The Special Administrative Counsel serves a purpose internally, but does not serve the needed purpose outside the system. A true "Ombudsman," existing outside and independent from the CDC would provide the separation and eliminate the conflict of interest perceived by complainants to exist by a Special Administrative Counsel within CDC.

Recommendations:

An independent position, outside of and independent from the CDC, should be established to investigate calls and inquiries from complainants dissatisfied with the process. Such an office could report to another entity, such as this Supreme Court, or BODA, or even the GOC. The position could assume the duties (and funding) of the Special Administrative Counsel who currently performs the same duties for the CDC. That particular investigative function occupies

only part of the Special Administrative Counsel's time, so the person occupying the Ombudsman role could also perform other roles as well. For example, the Ombudsman role could be one portion of the duties of a Supreme Court staff attorney position. Thus, the transfer of functions should be cost neutral. Any confidentiality concerns could be addressed by Texas Supreme Court Order.

Prosecutorial Misconduct

The last two years have seen major developments concerning discipline for prosecutorial misconduct. Those developments include the successful disciplinary case against former Williamson County District Attorney Ken Anderson, and corresponding statutory and rule changes. All of those developments trace back to the Michael Morton case.

In 1987, a Williamson County jury convicted Michael Morton for the murder of his wife. He received a life sentence. The lead prosecutor on the case was the Williamson County DA Anderson. (Mr. Anderson later became a district judge.)

In 2011, based on work by the Innocence Project and cooperating, pro bono lawyers in Texas, Michael Morton was exonerated. The evidence showed that DA Anderson had failed to provide defense lawyers with key exculpatory evidence, including statements made by Morton's three year old son, who had witnessed the murder and had said that another man killed his mother and that his father was not home at the time. DNA tests on a bandana found near the crime linked another man, Mark Alan Norwood, to the murder. After Morton's exoneration, Norwood was charged with the murder and then convicted; in March 2013, he received a sentence of life.

In November 2011, Julie Oliver, the Executive Director of the Texas Coalition on Lawyer Accountability, filed a grievance against Anderson, charging that he had violated Texas Disciplinary Rule of Professional Conduct 3.09 ("Special Responsibilities of a Prosecutor") and other disciplinary rules. The Office of Chief Disciplinary Counsel investigated the complaint, and concluded that "just cause" existed. Anderson elected to have the disciplinary case proceed in district court. In October 2012, the Commission for Lawyer Discipline filed a disciplinary petition against Anderson. Anderson raised various defenses, including a limitations defense.

After Morton's exoneration (following his 25 years of wrongful imprisonment), his lawyers also asked that a court of inquiry be convened to investigate Anderson. On February 10, 2012, Judge Sid Harle filed with the Texas Supreme Court an application and affidavit requesting appointment of a district judge to commence a court of inquiry. On February 16, 2012, Texas Supreme Court Chief Justice Wallace Jefferson appointed Judge Louis Sturns to preside over the court of inquiry. At the conclusion of the court of inquiry proceedings, Judge Sturns found that probable cause existed that Anderson had violated criminal laws in making false statements to the trial judge in the Morton case and in improperly withholding evidence. Judge Sturns stated: "This court cannot think of a more intentionally harmful act than a prosecutor's conscious choice to hide mitigating evidence so as to create an uneven playing field for a defendant facing a murder charge and a life sentence."

Ultimately, both the criminal case and the disciplinary case against Anderson were resolved by agreement. On September 23, 2013, Anderson resigned his position as district court judge. Anderson then pleaded no-contest to the criminal charges against him. Judge Kelly Moore sentenced Anderson to 10 days in jail, fined him \$500, and ordered him to perform 500 hours of community service.

On the disciplinary side, under Part X of the Texas Rules of Disciplinary Procedure, Anderson agreed to give up his law license in lieu of discipline. On November 11, 2013, the Texas Supreme Court accepted Anderson's resignation in lieu of discipline.

The Michael Morton case and the Anderson proceedings received national attention and led to statutory and rule changes. Well-known documentary filmmaker Al Reinert wrote and directed an award-winning film on the case, entitled *An Unreal Dream*. CNN repeatedly broadcast an abridged version of that film. See <http://www.cnn.com/2013/12/04/justice/exonerated-prisoner-update-michael-morton/>.

Subsequently the Texas Legislature passed the Michael Morton Act, S.B. No. 1611. The Act established a more open discovery process in criminal cases, including an open-file policy. The Legislature also passed S.B. 825, amending Texas Government Code §81.072 to require the Texas Supreme Court to adopt rules prohibiting issuance of a private reprimand for a prosecutor found to have violated Disciplinary Rule 3.09(d) by failing to disclose "all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the defense." See Tex. Gov't Code § 81.072(b)(11)(B)(ii). S.B. 825 also required that the Court "ensure that the statute of limitations applicable to a grievance filed against a prosecutor that alleges a violation of the disclosure rule does not begin to run until the date on which a wrongfully imprisoned person is released . . ." See Tex. Gov't Code §81.072(b-1).

The Texas Supreme Court amended applicable rules and procedures to implement those legislative directives. By Order of October 14, 2013, the Texas Supreme Court approved amendment of CLD Internal Operating Procedure 13 to prohibit such private reprimands. See Misc. Docket No. 13-9150. The Supreme Court also amended Texas Rule of Disciplinary Procedure 15.06 to extend the limitations period for a wrongfully convicted person to file a grievance. As a practical matter in the past complaints filed by imprisoned, convicted defendants only rarely proceeded very far through the disciplinary system while the complainant was still in prison. Amended Rule 15.06C now provides that a prosecutor may be disciplined for violation of Texas Disciplinary Rule of Professional Conduct 3.09(d) that occurred "in a prosecution that resulted in the wrongful imprisonment of a person" if the grievance is received by CDC within four years after the wrongfully imprisoned person is released from a penal institution. That change will allow persons who are wrongfully convicted to pursue discipline for prosecutorial misconduct after release from imprisonment.

The GOC commends the CDC and CLD for their commitment and perseverance in pursuing the Ken Anderson disciplinary case. Chief Disciplinary Counsel Linda Acevedo, trial counsel Laura Bayouth Popp (CDC Deputy Counsel for Administration), and Rebecca (Beth) Stevens (Assistant Disciplinary Counsel) showed skill and determination in bringing this landmark disciplinary case to a successful conclusion.

The GOC also recognizes the important steps by the Texas Supreme Court and the Texas Legislature to address the underlying procedural issues related to prosecutorial misconduct. Finally, the GOC commends Michael Morton for his remarkable, inspiring struggle both to obtain exoneration from his wrongful conviction and to improve the criminal justice and disciplinary systems for other innocent persons who might encounter similar situations in the future.

Recommendations:

1. The GOC commends the State Bar for the recent CLE program on the new discovery rules and encourages additional educational programs on the issue of prosecutorial and defense ethics in criminal cases.
2. Understanding that it is the responsibility of each district attorney to ensure his or her staff is trained in ethics, the GOC encourages the Texas District & County Attorney Association (“TDCAA”) to prepare and coordinate basic and advanced ethics training for all assistant district attorneys.
3. The GOC recommends that specific ethics training on *Brady*, *Giglio*, and Disciplinary Rule 3.09 issues be included in the required three hours of ethics training for State prosecutors.

Grievance System Symposium

On April 16, 2014, the State Bar conducted the Grievance Symposium – 2014. The program was excellent and well-attended. Topics included Chief Disciplinary Counsel Linda Acevedo’s overview of the Texas attorney discipline system; a panel on immigration-law “red flags”; a report from the State Bar’s Task Force on Aging Lawyer Issues; a presentation on the Attorney Discipline Support (including the Advertising Review Committee, and the Client Attorney Assistance Program); an update on Barratry; diversion and prevention initiatives (GRP and TLAP); and a panel on trust accounts. The GOC commends the State Bar—and in particular CLD Chair Guy Harrison and CDC Linda Acevedo—for their hard work in organizing and presenting this successful, informative Symposium.

The recording of the Symposium will provide a valuable tool in the training of local grievance panel members. Of particular note for the GOC was the Symposium segment on immigration practice. For the past two years, the GOC has gathered substantial information on immigration attorney practices and the potential for significant problems that would result from any federal comprehensive immigration reform legislation. GOC congratulates the CDC and the CLD for including this topic in the Symposium.

Additionally, Ron Bunch, Guy Harrison, and Linda Acevedo have made themselves readily available to the GOC during this two-year report period to discuss other topics of concern conveyed to us as we traveled across the state. They have taken expeditious action to address these topics discussed with them, including immigration issues and web access by the public to information related to attorney rule violations and the sanctions imposed.

Recommendations:

The GOC recommends that the Symposium recording of the immigration segment be used as a training tool for local grievance panel members who may need to address an increasing number of immigration-law related complaints involving this very complex area of law.

Public Access

In previous reports, the GOC has recommended that the CDC make attorney grievance complaint forms available to the public through the local District Clerks' offices. In response, CDC has generally indicated that such forms are available in the district clerks' offices across the state. Despite this assurance, the GOC has received comments from attorneys and district clerks (e.g., in Austin and Galveston) that many attorneys and clerks are unaware that complaint forms are available in the district clerks' offices.

This year the GOC reached out to a former member of the GOC, Velva Price, who will become the District Clerk for Travis County in January 2015. Ms. Price has offered to work with the CDC on new and creative ways to make the complaint forms available to the public through her office.

Recommendations:

CDC should appoint a representative to work with Velva Price, the Travis County District Clerk-elect, to develop new and creative methods to (1) make complaint forms available to the public through the district clerk offices, (2) make the public aware of those forms, and (3) expand that program through other district and county clerks' offices.

Disciplinary Issues: Comprehensive Immigration Reform

Background:

In 2013, comprehensive immigration reform (CIR) became a significant national issue in Congress. The prospect of CIR already has affected immigration-law practice in Texas and other states. If Congress enacts CIR legislation, millions of immigrants and potential immigrants will be affected—and the effect on the disciplinary system will be massive. The GOC heard from many speakers concerning existing and future abuses associated with the prospects of CIR.

According to the Pew Research Center's "*Hispanic Trends Project*," published in September 2013, 11.7 million unauthorized immigrants were living in the United States as of March 2012—including 1.7 million in Texas.

If CIR legislation passes, millions of unauthorized immigrants will seek legal advice from Texas lawyers—and from non-lawyers. Many of those immigration-services providers will be knowledgeable and competent. Many will not.

The GOC received input from several sources concerning these existing and potential issues—including from immigration lawyers, lawyers and representatives from nonprofit entities such as Catholic Charities Immigration Counseling Services, a retired immigration judge, and the immediate past president of the Texas-Oklahoma-New Mexico Chapter of the American Immigration Lawyers Association (AILA). These conversations focused on several issues relevant to the disciplinary system:

1. Ineffective Assistance of Counsel: The “Lozada” Rule and Its Effect on the Grievance Process

In *Matter of Lozada*, 19 I&N Dec.637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), the Board of Immigration Appeals ruled that an immigrant desiring to reopen a deportation order based on “ineffective assistance of counsel” generally must file a grievance against the lawyer who represented the immigrant. *Lozada* has the practical effect of encouraging disciplinary complaints, even if the complaint has little or no merit.

Few grievance committees in Texas have members knowledgeable in immigration law. CIR is likely to dramatically increase the number of immigration-law disciplinary complaints in Texas

2. Pro Se Grievances

Several immigration attorneys and social service agency representatives who spoke to the GOC voiced concerns about the prospects for grievances filed pro se by immigrants. The concerns centered on (1) the lack of panel members knowledgeable in immigration law, policies, and procedures, and (2) the resulting likelihood that panels would summarily dismiss many or most pro se grievances because the non-English speaking complainants would be unable to properly articulate a cognizable grievance. The concerns addressed both classification decisions (by CDC staff) and Summary Disposition Panel decisions.

3. Additional Issues Raised as a Result of Comprehensive Immigration Reform

The GOC received input concerning various other potential issues that CIR will or might generate:

CIR will produce millions of potential clients. Given the economics of law practice, the likelihood is that many lawyers who have not previously practiced immigration law will switch their practice to immigration law. That influx of inexperienced practitioners well may produce additional disciplinary complaints.

To some extent, the vulnerability of immigrants is increased by the Latin American phenomenon of “*notarios publicos*.” In Mexico and South America, *notarios publicos* have legal status far above notaries in this country. Thus, advertising and client-solicitation by *notarios publicos* has the potential to damage a large number of immigrants.

The GOC also received reports concerning misleading immigration-law advertising in newspapers and other publications.

The issues discussed above appear likely to adversely affect the disciplinary system if CIR becomes a reality. Guy Harrison, Chair of the Commission for Lawyer Discipline, and Linda Acevedo, Chief Disciplinary Counsel, spoke to the GOC about these issues. Clearly, they, CDC, and CLD have worked hard to anticipate and deal with these issues.

Recommendations:

1. The GOC recommends that the State Bar use a select group of immigration law practitioners, possibly identified through the American Immigration Lawyers Association, Texas Chapter, as a resource for educating and advising the various entities within the grievance governance system.
2. The GOC recommends that CDC modify the complaint form to indicate if the complaint is a *Lozada* related complaint.
3. The GOC recommends that the District Directors of the State Bar seek out and appoint attorneys with immigration law experience for local grievance panels.

Dismissal of Grievances Related to Immigration Cases

In our discussions with practicing immigration attorneys, both attorneys in private practice and with community service organizations, they consistently stated that too many immigration related grievances were being summarily dismissed for a variety of reasons. They were concerned that unscrupulous attorneys have concluded they have little to fear from the grievance process and are relatively unafraid to prey upon immigrants. The potential advent of immigration reform heightened their concerns.

Recommendations:

The GOC looks forward to working with the CDC over the coming years to use information collected in the new reporting system to track grievances related to immigration cases and their disposition so as to gather and further analyze statistical data with regard to this issue.

IOLTA Issues

Since 2012, the GOC has studied several IOLTA issues. Anecdotal reports to the GOC from accounting experts and representatives of specialty bars have indicated that several IOLTA-compliance issues may be widespread. Over 20 years ago, in 1993, the American Bar Association adopted the Model Rule for Random Audit of Trust Accounts to encourage IOLTA compliance. Since then, 12 states have adopted that Model Rule. Texas has not. Even earlier, in 1988, the American Bar Association adopted the Model Rules for Trust Account Overdraft Notification, requiring financial institutions to notify the state lawyer disciplinary agency when an overdraft has occurred in a lawyer's trust account.

The GOC also received substantial input concerning non-refundable retainers, as addressed in Opinion 611 (2011) of the Texas Professional Ethics Committee.

Members of practice areas that involve high-volume client bases, such as immigration and criminal-defense lawyers, addressed IOLTA-compliance and non-refundable retainer issues. The GOC heard comments such as “most members of my bar do not follow the practices that, as a group, perhaps they should.”

The GOC also heard comments concerning the view that the technical IOLTA requirements (or “hyper technical,” as some say) are widely disregarded.

Accounting experts also emphasized the difficulty of proper recordkeeping in high-volume practices in which clients provide retainers, but then make installment payments for portions of fees.

The GOC also heard from lawyers who were unaware of practical, economical accounting systems or software to achieve IOLTA compliance.

Recommendations:

1. The GOC recommends CDC develop a new, expanded educational campaign for attorneys regarding how to comply with IOLTA requirements—including resources to identify specific systems, programs, and software to assist practitioners who have large numbers of clients.
2. The GOC recommends that the State Bar expand efforts to educate Texas lawyers concerning how to identify and handle non-refundable retainers.

Case Management and Statistical Reporting

The GOC's role requires that we identify, access, and evaluate available reports and statistics concerning the disciplinary system. The GOC's 2012 Report noted that the CDC was in the process of obtaining a new case management system to replace its then current system, WinVantage (WV). According to the Bar's Case Management System Request for Proposal, dated January 24, 2011, the contract for the new program was scheduled to be awarded by the end of April 2011 with a final acceptance as early as October 2011. However, apparently the system did not become operational until June 2013. Given the substantial logistical challenges involved in developing and implementing the new system, that protracted period for implementation is not surprising.

JustWare (JW) is CDC's new system. JW has not been able to convert the previous data from the WV system dating back to June 2004. Accordingly, CDC has decided to keep the WV system operational, in reserve and for the short term, in order to access earlier data.

The JW system appears to be a substantial improvement over the WV system. The JW system provides more detailed statistical information that should be very useful for CDC, CLD, and the GOC, to assist in evaluating the performance of the disciplinary system.

The GOC commends the CDC for their dedication and hard work in finding and implementing this new case management system. The enhanced data should benefit the entire disciplinary system.

Education and Training

During the last two years, several members of grievance panels in different regions of the State have expressed concern about the level of training and performance of some CDC lawyers. The specific concern is that during evidentiary hearings, some CDC lawyers appeared to be unfamiliar with basic rules of evidence. For example, in some hearings the CDC lawyers did not know how to overcome simple hearsay objections from respondents' counsel, even though the panel members (who were experienced trial lawyers) could see readily available options to avoid the hearsay problems. The panel members suggested that the young, inexperienced CDC lawyers needed more training and preparation to be able to handle evidentiary hearings. On the other hand, the GOC is well aware that several very highly skilled, senior lawyers in CDC are clearly able to handle quite well the entire range of administrative and litigation settings of disciplinary cases.

Recommendations:

CDC should review the training, experience, and litigation skills of individual staff lawyers, particularly focusing on new and young lawyers, to ensure that the lawyers who handle hearings have received the training and experience needed to properly handle the hearings. One lawyer who serves on a grievance panel suggested that CDC should develop a "litigation skills boot camp" for all new lawyers, and perhaps develop video materials with mock hearings and

demonstrations of how to handle the typical evidence and procedural issues that arise during hearings. However, the GOC believes that CDC is best able to make the assessment of current staff skill levels, and if further training is necessary or appropriate, CDC is fully capable of developing the most suitable training opportunities for CDC lawyers.

Statewide Distribution of Sanction Results to Grievance Panels

Grievance panel members consistently indicated to the GOC that they were unaware of the sanctions that other grievance panels imposed. Some panel members said that they would like to receive or have access to that information in order to be aware of what other panels have done in particular types of cases. However, other panel members said that because the facts and sanctions considerations in each disciplinary case are so different, they did not think that information would be very useful. The GOC agrees that sanctions in disciplinary cases must be based on the particular facts of each case, as well as the several factors set out in Texas Rule of Disciplinary Procedure 2.18. Nonetheless, because some panel members have expressed an interest in having that information available, the GOC concludes that providing access to that information, perhaps in an online database, is desirable for those panel members who might want to review it.

Recommendations:

CDC should develop an online database that grievance panel members across the State can access, when and if they want to do so, listing the public sanctions assessed by grievance panels, categorized by general types of professional misconduct.

In Appreciation

The GOC wishes to thank the Supreme Court for their support during the past two years. We would also like to thank Jennifer Cafferty, General Counsel to the Supreme Court of Texas, for her responsiveness as liaison to the Court. Ms. Cafferty left her position with the Court as of September 2013. The GOC wishes her much success in her new position. Nina Hess Hsu, the new General Counsel, has made clear that the transition will be seamless as she, likewise, has been responsive to the GOC. Their willingness to set aside time to confer with us, both in person and by phone, has been invaluable in the performance of our duties for the Court.

Last August, the appointment term expired for our Chair, Judy Sebesta, from Dallas who has served the GOC since 1995. The GOC members want to express their heartfelt thanks to Judy for her leadership as Chair. This was particularly noteworthy because Judy was the first public member to Chair the GOC since its inception. Her organizational abilities, her knowledge of technology, her thorough knowledge of the grievance governance system, and her writing skills proved invaluable. Judy has devoted her years of experience to improving the legal profession since 1980. Judy served in Dallas on the local Grievance Committee panel, was Vice-Chair to

the Fee Disputes Committee and served on the Unauthorized Practice of Law Committee. Judy may have thought her service on the GOC ended August 2014; however, because GOC was short a public member, Judy willingly agreed to continue serving this past year. She also has contributed to the preparation and submission of this report. The GOC is grateful to the Court for allowing this additional year of service.

The term of the current Chair of the GOC, Stan Serwatka, expires this year. Stan is an attorney member from El Paso and has served on GOC since 2007. He has brought a broad, diverse, and very special perspective to GOC. He is an Assistant United States Attorney for the Western District of Texas, and previously he was in private practice. For some 14 years, Stan has taught as an adjunct instructor at El Paso Community College—teaching American Government and Politics. Stan also has served as a Director of the El Paso Bar Association, and he has contributed extensive service to the disciplinary system. He served on the District Seventeen Grievance Committee (including as Chair), on the Board of Disciplinary Appeals (including as Vice Chair)—and, of course, for seven years on the GOC.

The GOC notes that the appointment term will also expire this year for attorney member Demetrius Bivins, the GOC Vice-Chair from Houston. Demetrius has served the GOC since 2007. Demetrius has faithfully served the State Bar of Texas in many positions for many years—including as a State Bar Director, Chair of the African American Lawyers Section, and Vice-Chair of the Military Lawyers Section. Demetrius’s experience, institutional knowledge, insightfulness, and dedication will be difficult to replace.

Additionally, the GOC notes the loss of public member Kelly Benzon from Austin. Kelly has served the GOC since 2011, and will be leaving her service with the GOC this year. We thank her for the hours she contributed to the GOC, particularly in scheduling and organizing our many guests as we traveled across the state. Her dedication to the GOC is appreciated and will be missed.

Lastly, our thanks to Don Jones, Staff Counsel for the SBOT, for his immense knowledge and contributions as a single point of contact for providing us important information and support in complying with the Court’s Order and our responsibilities.