

STATE BAR OF TEXAS

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August 12, 2022

The Honorable James D. Blacklock
Justice, Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

via electronic mail

Dear Justice Blacklock:

Thank you for the opportunity to comment on the Grievance Oversight Committee's ("GOC") 2022 biennial report to the Supreme Court of Texas.

We have reviewed the report, and we want to express our sincere appreciation for the dedicated work of the volunteers who serve on the GOC. The GOC serves an important role in reviewing the attorney disciplinary process, and the State Bar values the GOC's recommendations to the Court.

This letter addresses several parts of the GOC report. The Commission for Lawyer Discipline ("CFLD") and the Office of the Chief Disciplinary Counsel ("CDC") will be submitting a separate response, which will address other recommendations in the GOC report.

The Effective Operation of the Disciplinary System

The efficient and effective operation of the attorney disciplinary system is a central purpose of the State Bar. It is essential to support public confidence in the legal system and to ensure that the lawyers of Texas meet the ethical standards promulgated by the Court.

Along with the GOC and the Court, the CDC, the CFLD, the Board of Disciplinary Appeals ("BODA"), and the Committee on Disciplinary Rules and Referenda each serve a significant role in ensuring that the public is protected and that the disciplinary process is fair to all participants. The work of the 375 volunteers that comprise the district grievance committees throughout the state is also integral to the success and effectiveness of the attorney disciplinary system.

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We are pleased that the GOC recognized the work of various Bar programs and departments, including the Client Security Fund (“CSF”), the CDC, the Client-Attorney Assistance Program, and the Texas Lawyers’ Assistance Program (“TLAP”).

Public and Member Education

The State Bar appreciates the GOC’s recommendations regarding the demystification of the disciplinary process. We agree that additional efforts to increase awareness of the grievance process through public and member education would be beneficial. We will be working with the Texas Young Lawyers Association (“TYLA”) to update its *Grievance and Malpractice 101* guide, including to address the recent implementation of investigatory hearings.¹ Bar and TYLA leadership will also work together to consider presentations and other communications that could benefit attorneys in all areas of law and geographic regions of the state.

As part of efforts to increase awareness of the disciplinary process, we think it is helpful to highlight that the CDC administers the grievance system separately from other State Bar operations, and that the CDC’s work is overseen by the CFLD, a standing committee composed of six public members appointed by the Supreme Court and six attorney members appointed by the State Bar president. We think it is also helpful to better educate the public and membership about BODA’s role as an independent appellate body of 12 attorneys appointed by the Supreme Court. This outreach will help to clarify the checks-and-balances of the disciplinary system and to avoid any incorrect perception that State Bar officers or directors have involvement or oversight in any disciplinary proceeding.

As suggested in the GOC report, we support a partnership with Texas law schools to include presentations about the attorney disciplinary process as part of required ethics courses and plan to reach out to Texas law school deans on this subject.

Additionally, in an effort to better educate new Texas lawyers about the grievance system, we respectfully offer the suggestion that the Supreme Court could require that the Texas attorney disciplinary process be a component of the MCLE course *Justice James A. Baker Guide to Ethics and Professionalism in Texas* that is required for new lawyers.²

¹ Investigatory hearings were reinstated as part of the disciplinary process by order of the Supreme Court of Texas following the 2016-2017 Sunset Review process and the resulting legislative changes to the State Bar Act. *See* Supreme Court of Texas Corrected Order Giving Final Approval of Amendments to the Texas Rules of Disciplinary Procedure, Misc. Docket No. 18-9112 (Aug. 28, 2018); *see also* Tex. Gov’t Code § 81.082.

² *See* Supreme Court of Texas Orders, Misc. Docket Nos. 15-9240 (Nov. 17, 2015); 09-9068 (Apr. 27, 2009); 06-9075 (June 6, 2006); 96-9078 (Mar. 1, 1996), *as amended by* Misc. Docket No. 96-9226 (Oct. 15 1996).

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CSF

The CSF is maintained and administered by the State Bar to issue grants to clients who have been harmed by their lawyer's dishonest conduct.

The GOC recommended that the CSF online application and CSF brochure also be provided in Spanish. We support this recommendation.

We plan to study additional recommendations by the GOC regarding the CSF, including the recommendation that the State Bar Board of Directors "amend its policy manual to formalize public education about the CSF."³

Overdraft Notification for Trust Accounts

The GOC report recommends requiring financial institutions to report overdrawn attorney trust accounts as an additional client protection. The GOC report notes that this would prevent further depletion of the CSF.

As part of its 2015 Self-Evaluation Report to the Sunset Advisory Commission, the State Bar identified trust account overdraft notification as a major issue.⁴ In that report, the State Bar explained that a trust account notification requirement would "increase CDC's ability to identify potential lawyer misconduct involving trust accounts, deter lawyers from violating disciplinary rules regarding client trust accounts, and increase the protection of client funds."⁵ Although a statutory change has not been implemented to require such notification, we continue to view this as a major issue.

TLAP Confidentiality

TLAP provides assistance to law students, lawyers, and judges related to substance use and mental health issues. Confidentiality is a key component of TLAP's ability to provide help. We appreciate the GOC's support regarding the efforts of the CDC and the State Bar to ensure TLAP's confidentiality. As noted in the GOC report, the CDC and the State Bar have issued a memorandum of understanding in support of TLAP confidentiality.⁶

³ GOC Biennial Report, p. 7 (June 1, 2022).

⁴ State Bar of Texas Self-Evaluation Report to the Sunset Advisory Commission, pp. 278-279 (Sept. 1, 2015), available at <https://www.sunset.texas.gov/public/uploads/files/reports/State%20Bar%20of%20Texas%20SER%20-%20Accessible.pdf>.

⁵ *Id.* at p. 279.

⁶ Memorandum of Understanding Regarding TLAP Confidentiality, the State Bar of Texas, and the Office of Chief Disciplinary Counsel, available at https://www.texasbar.com/AM/Template.cfm?Section=Content_Folders&ContentID=56192&Template=/CM/ContentDisplay.cfm.

We support the GOC's recommendation to reinforce the confidential nature of TLAP and stand ready to provide feedback on any possible rule changes should it be desired by the Court.

Additional Review of Disciplinary System and Public Feedback

In addition to the review by the GOC, the State Bar has recently taken extensive steps to review the attorney disciplinary system and to solicit public feedback regarding possible improvements to the process.

At its September 25, 2020, meeting, the State Bar Board of Directors created the Task Force on Public Protection, Grievance Review, and the Client Security Fund ("Task Force"). The Task Force consisted of 21 members from throughout the state who represented various areas of practice, including civil, family, criminal, and appellate law. As stated in its June 16, 2021, report to the Board of Directors:

The purpose of this Task Force is to study and help facilitate a continuing conversation between members of the Bar, public and State Bar Board of Directors about the grievance process and the Client Security Fund, with the mind-set of ensuring the grievance process remains fair to lawyer members of the State Bar of Texas while at the same time ensuring that the public is protected from lawyers who may take advantage of them.⁷

In conducting its work, the Task Force held two listening sessions and received written comments from the public regarding the disciplinary system. The Board of Directors' Discipline and Client Attorney Assistance Program Committee ("DCAAP") subsequently studied the Task Force's Report for several months and issued a report to the full Board in April 2022.⁸

As background, DCAAP monitors the policies and procedures of the disciplinary system and advises the Board of Directors concerning any proposed revisions to the Texas Disciplinary Rules of Professional Conduct or the Texas Rules of Disciplinary Procedure. DCAAP also meets with the Chief Disciplinary Counsel to discuss rule proposals related to the disciplinary system.

As part of its review of the Task Force report, DCAAP interviewed various grievance committee chairs to obtain their input on the Task Force recommendations and the

⁷ Task Force on Public Protection, Grievance Review, and the Client Security Fund Report, p. 1 (June 16, 2021), available at https://www.texasbar.com/AM/Template.cfm?Section=Meeting_Agendas_and_Minutes&Template=/CM/ContentDisplay.cfm&ContentID=53664.

⁸ The DCAAP report and supporting documents are available at https://www.texasbar.com/AM/Template.cfm?Section=Meeting_Agendas_and_Minutes&Template=/CM/HTMLDisplay.cfm&ContentID=56575.

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overall functioning of the disciplinary system. DCAAP also reviewed statistics about grievances filed and dismissed and the impact of investigatory hearing panels. DCAAP will continue to review these statistics moving forward and update the Board of Directors on proposed rule changes.

Like the avenues for public feedback and general review provided by the GOC, we believe that these efforts help ensure that the disciplinary process is fair and efficient and that the public is protected.

Conclusion

Again, thank you for the opportunity to comment on the GOC's 2022 biennial report. We commend the GOC for its thorough review of the attorney disciplinary system and will continue to review its recommendations.

As always, the State Bar remains committed to serving the Court, the public, and the lawyers of Texas.

Please do not hesitate to contact me if you have any questions or need anything further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Trey Appfel', with a long horizontal flourish extending to the right.

Trey Appfel

cc: The Honorable Nathan L. Hecht
The Honorable Debra Lehrmann
Nina Hess Hsu
Melody Poole