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THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY THE SUPREME COURT OF TEXAS

July 5, 2011

Honorable Don R. Willett
Justice, Supreme Court of Texas
P.O. Box 12248
Austin, TX 78711

RE: Grievance Oversight Committee Report 2011

Dear Justice Willett:

Thank you for the opportunity to comment on the 2011 report submitted to the Supreme Court by the Grievance Oversight Committee. The Board of Disciplinary Appeals has reviewed the report and would like to thank the committee for its time and the dedication required to review and evaluate the grievance system and compile its recommendations for the Court. I had the opportunity to meet with representatives from GOC last summer in Midland for informal discussions about issues the committee was considering.

BODA discussed at length during its June 30 conference the section of the report concerning a disciplinary ombudsman. The report's thoughtful analysis of the potential benefits of creating an independent ombudsman and possibly expanding the duties to include advocate assistance warrants additional discussion. However, BODA concluded that the GOC's recommendation to place an ombudsman in reporting line to BODA with the responsibility for investigating the handling of particular grievances, as does the current Ombudsman who works for the CDC, or with expanded duties including assisting with complaint filing, is inconsistent with BODA's judicial function. GOC previously concluded that the ombudsman should not report directly to BODA in its 2007 Report.

Although BODA responds to numerous inquiries concerning the grievance process, BODA cannot, as an impartial tribunal, give legal advice to or otherwise assist persons with grievance filing or defense. Having BODA investigate complaints handled within CDC would suggest that BODA supervises one of the parties appearing before it, again inconsistent with BODA's judicial function. Moreover, BODA could be in the position of supervising the investigation of cases which could be appealed to BODA, giving it access to information outside the record on which an appeal is based. In addition, part of the ombudsman's duties could also potentially include investigating and recommending improvements in BODA case handling or assisting with filing BODA appeals.

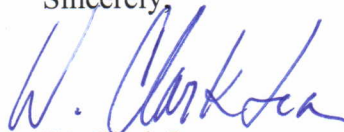
BODA believes that it should assess grievance handling through its appellate function of reviewing dismissed grievances and hearing and deciding appeals from judgments of evidentiary panels. If the Court desires additional review of grievances dismissed at Summary Disposition, for example, it can address that through disciplinary procedure and amend BODA's jurisdiction to include an appeal from those dismissals.

The sections and recommendations of the report concerning the CAAP program, grievance referral program, the Texas bar exam, and case management do not involve BODA, and we do not comment on those. BODA actively supports efforts to educate the bar, participants, and the public about professional ethics and the disciplinary system as well as opportunities for the entities who work in the system to convene, discuss how to coordinate and improve their respective roles, and jointly deal with substantive and procedural issues.

BODA commends the GOC for its continuing work to encourage a collaborative effort among the State Bar, the district grievance committees, the Commission for Lawyer Discipline, the Chief Disciplinary Counsel, and the Board of Disciplinary Appeals to refine the disciplinary system.

Please do not hesitate to contact me if you would like to discuss this further.

Sincerely,



W. Clark Lea
Chair

xc: Justice Dale Wainwright
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