

STATE BAR OF TEXAS



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EXECUTIVE DEPT-SBOT

Office of the Chief Disciplinary Counsel

June 25, 2010

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

Dear Justice Willett:

The Commission for Lawyer Discipline (“Commission”) and Chief Disciplinary Counsel (“CDC”) have reviewed the Grievance Oversight Committee’s (“GOC”) annual report to the Court. We appreciate the opportunity to provide comments on the report and commend the GOC for the time and effort it invested in putting its report together.

The Commission and the CDC continue to look for ways to ensure that the public has access to, and knowledge of, the State Bar of Texas grievance process. All suggestions regarding ways to improve that effort are taken seriously. It is especially troubling if efforts have led to increased work for legal aid providers. The Commission, CDC, and State Bar of Texas are committed to making information available to legal aid organizations, local bar associations, community groups, and others to ensure that the public gets the help and information it needs. The GOC made some good suggestions about ways those communications might be improved and the CDC will work with the State Bar staff to find ways to ensure that duplication of effort is avoided, that the public receives appropriate information in a timely manner, and that efforts to inform and educate the public about the State Bar includes information about the disciplinary process.

The Commission and CDC are mindful of the other issues discussed in the GOC report and want to continually review processes and procedures to ensure they are up to date and effective:

- The parameters of volunteer grievance committee members communicating with CDC staff have been an integral part of grievance committee and staff training. This information is also incorporated in the procedural guide for conducting evidentiary panel proceedings provided to all grievance committee members. We work to reiterate these procedures and relationships with volunteers throughout their service.

- Developing procedures for removing an impaired grievance committee member may be a proactive measure that the State Bar Board should adopt as part of its policy manual. The Commission will review policy and make recommendations to the board regarding possible updates that might be considered.
- Early resolution of disputes is a goal of the Commission and CDC. The State Bar Client Attorney Assistance Program (CAAP) program was created to ensure that concerns of the public could be resolved quickly without necessarily entering the grievance process. Mediation is often used once a matter reaches litigation, but under current rules the availability of dispute resolution before litigation is limited.
- The Commission and CDC have worked hard to make the ombudsman program effective for those who need assistance. The ombudsman needs access to confidential information regarding dismissed cases to provide real assistance to callers and that access requires that the individual be a CDC employee. CAAP, a separate department from CDC, also plays a tremendous role in helping the public understand the process and in the resolution of minor problems between attorneys and clients.

We have also attached an information sheet of the programs that have been implemented and enhanced over the past 20 years to educate lawyers about their ethical obligations, to assist lawyers who have ethical questions, and to provide the public with methods for resolution of issues other than progressing through the grievance process. The Commission and CDC believe that these programs and resources largely account for the decrease in number of grievances filed and sanctions imposed despite the growing lawyer population. The State Bar should be recognized for its continued efforts in addressing the needs of its members and the public.

The Commission and CDC appreciate the opportunity to make these comments to the Court. We have extended our full cooperation to the GOC and believe all concerned with the discipline system will benefit from open discussion and a free exchange of ideas. We look forward to a continued relationship of candor and transparency with our colleagues in the disciplinary system.

Sincerely,



Betty Blackwell, CHAIR
COMMISSION FOR LAWYER DISCIPLINE



Ron Bunch, VICE-CHAIR
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➤ **Client-Attorney Assistance Program (CAAP) (1999).** CAAP is the Bar's statewide dispute resolution program aimed at assisting clients and attorneys in resolving minor problems affecting their relationship. Every year CAAP resolves on average 1,000 cases without the need for the filing of a formal grievance. The top complaints are neglect and communication concerns and are in the areas of family, personal injury, and criminal law – the same issues and areas of law which typically top the list for grievances filed.

➤ **Texas Lawyers Assistance Program (TLAP) (1989).** It has long been recognized that lawyers find themselves defending against grievances because of problems involving substance abuse, chemical dependency, and mental health issues. More lawyers and judges have been trained about symptoms, are aware of the program, and are making referrals to the program which currently maintains over 500 active volunteers. During the last bar year, peer assistance engaged in outreach to 552 lawyers (54% substance use disorders/46% mental health disorders).

➤ **Advertising Review Committee (ARC) (1995).** The ARC, which manages the filing and review process for attorneys who market their services to the public to ensure that lawyers are complying with established ethical requirements, has significantly contributed to the decline of grievances and discipline in this area. During 2009-10, the Advertising Review Department reviewed more than 3,700 submissions and sent more than 100 non-filer notices to lawyers who had not filed applications.

➤ **Law Practice Management (LPM) (1995).** LPM is designed to assist solo and small firm practitioners in the delivery of legal services, by developing and promoting competent, professional, efficient and effective law office management practices through online classes, legal support staff seminars, live and video seminars, and webcasts. LPM presented online courses and webcasts to more than 1,200 lawyers, a significant increase over the previous year and assists approximately 17,000 lawyers annually through a monthly newsletter, local bar events, telephone inquiries, and office referrals.

➤ **Attorney Ethics Helpline (1992).** This toll-free number is maintained by the CDC as a service to the members of the Bar and is designed to assist Texas attorneys who have questions about their ethical obligations to clients, courts, and the public under the rules of professional conduct. This service has grown from a part-time staff position in 1992 to two full-time employees who handle 4,500 to 5,000 inquiries per year.

➤ **Texas Center for Legal Ethics and Professionalism (TCLEP): James A. Baker Guide to the Basics Program (1996).** Newly licensed lawyers are required to complete a four-hour professionalism course sponsored by TCLEP. The Supreme Court of Texas ordered in October 2006 that attorneys who do not take the course in a timely matter shall be subject to administrative suspension.

➤ **Ethics CLE Requirement Increased (1996).** Minimum Continuing Legal Education was implemented in 1986 with a one-hour ethics requirement. That requirement was raised to three hours

in 1996. Most CLE courses have an ethics component and that focus has certainly made lawyers more aware of the pitfalls.

➤ **Free Legal Research (2001).** In partnership with current provider Casemaker, the State Bar of Texas provides free online legal research to State Bar members. Currently 32,300 Texas lawyers are registered users of Casemaker. Attorneys have access to a powerful search engine and can search the primary law of all 50 states as well as federal law. In April 2010 Casemaker implemented a mobile version of the service that enables lawyers to conduct legal research directly from their smartphones and tablet computers.

➤ **Texas Young Lawyers Association.** TYLA has continued to create programs directed at client relations, how-tos on opening an office, free CLE on ethics and how to be certified to practice in various courts. These programs continue to have a tremendous impact on those lawyers who may not have access to mentors or the structure of a big firm.

➤ **Fee Dispute Program: Resolving Fee Disputes (2007).** The State Bar of Texas created a model fee dispute program and helps publicize local bar association and Texas fee dispute programs. Information is available online and by calling CAAP.

➤ **TexasBar.com Ethics Page (2010).** Created at the suggestion of the Supreme Court of Texas, this page compiles all the ethics rules and resources for lawyers, judges, and other legal professionals.

➤ **Other Factors: Fewer Private Reprimands Assessed/Consolidation of Complaints.** In a review of the years with the highest sanctions, the bulk of the sanctions involve the imposition of private reprimands, which are generally reserved for minor misconduct and misconduct resulting from poor office management or from early symptoms of substance abuse or other mental health issues. For example, in the 1993-1994 Bar year, of the 655 sanctions entered, 288 were private reprimands and in the 1994-1995 Bar year, 235 private reprimands account for the overall 673 sanctions entered. In addition, multiple complaints are more often consolidated into one case resulting in a single discipline. For example, in the 2007-2008 Bar year, 299 sanctions were entered which resolved 518 complaints.