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June 20, 2016

Ken Levine, Director
Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711-3066

Dear Mr. Levine:

On behalf of the Bennett Law Firm, enclosed, please find our response to the Sunset Advisory Commission's Staff Report. Please also see attached Lillian Hardwick's letter to the Grievance Oversight Committee. We appreciate the opportunity to comment on the staff report.

Special thanks to Katharine Teleki, Sean Shurtleff, Amy Tripp and Kay Hrick for their thorough efforts in examining the State Bar of Texas.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Bob Bennett

Robert S. "Bob" Bennett
Attorney at Law

I am very appreciative of the opportunity that you have provided for me to provide my recommendations. I have been in communication with thousands of Texas attorneys, some judges, and many laypersons; I have received extensive documentation about the Texas Grievance System that I hope will be helpful to the Commission. We have established a website that should be reviewed: www.ocdc-revealed.com. We also have an active presence on Facebook: "Hold the Office of Chief Disciplinary Counsel Accountable."

I have spoken and continue to speak with and before numerous Texas State Representatives and Senators about these suggested improvements. With the State Bar of Texas ("SBOT") facing Sunset Review, there is sufficient time for consideration to be given to make changes that would protect the public and enhance the SBOT. If this is not done, given the strong antagonism by many members of the Texas Legislature and the vast majority of SBOT members, the SBOT should be put out of existence. With this in mind, I hope you will carefully consider the following:

BACKGROUND

I grew-up in scenic Amarillo, Texas (having been born in Phillips, Texas - which no longer exists). I attended Amarillo Junior College, studied overseas, and ended up getting my B.A. and M.B.A. from George Washington University.

While in D.C., I served as the Legislative Assistant to United States Congressman Patrick T. Caffery from New Iberia, Louisiana. I returned to Texas and received my Doctorate of Jurisprudence from the University of Houston Law Center in 1974. I was licensed to practice law on April of 1974 and am licensed at the present time. During this period, I served as a federal trial attorney, Assistant United States Attorney, Corporate Counsel for the Coca-Cola Bottling Company in Guatemala City, Guatemala, and for most of my practice in private practice in Houston, Texas. I had the highest rating for an AV attorney under the Martindale-Hubbell peer-review ratings ("AV Preeminent® (4.5-5.0) - AV Preeminent® is a significant rating accomplishment - a testament to the fact that a lawyer's peers rank him or her at the highest level of professional excellence"). I also was rated by AVVO.COM and had the highest rating for ethics and professionalism, along with Client Recommendations and Peer Reviews of any attorney in Texas.

Pertinent to this Commission's work, I have represented attorneys in grievance matters and I have also spoken 30+ times on grievance and grievance-related matters before bar associations, law schools, and civil groups. I was the only expert witness who testified in the recusal hearing for Exoneree Anthony Graves, and filed both grievances for him that ultimately led to former District Attorney Charles

Sebesta being disbarred. You are aware of the Michael Morton Law, and the Graves case was the first successful use of this law.

I have been qualified by other courts to testify as an expert on ethics. I have given ethics/ grievance presentations to the Arlington Bar Association, the Matagorda Bay Bar Association, and at the Third Annual Personal Injury Attorney Trial Seminar in Houston, Texas. I have spoken to the Katy Bar Association and Ft. Bend Bar Association on the OCDC's Wrongful Seizure of Fees.

Since 1979 up to the present time, the SBOT has authorized hundreds, if not thousands, of Texas Attorneys to receive CLE credit for hearing me speak on a variety of topics – but mainly on ethics. When you add up the years of experience practicing many different areas of the law, having been a prosecutor, and the time with the Harris County District Attorney's Office, having represented numerous attorneys in grievance matters of a great variety (from barratry to advertising violations) including John O'Quinn (deceased) and State Representative Ron Reynolds (public information), the writings and publications, we can conclude I have had some experience with the grievance process.

RECOMMENDATIONS

For further information about improving the Grievance Process, the site, www.ocdc-revealed.com, serves as the repository for ideas and dialogue on how to improve the Grievance Process. The title page states:

"This site is for the sole purpose of improving how the State Bar of Texas handles grievance matters. The old adage that power corrupts and absolute power corrupts absolutely has no better application than to the Office of Chief Disciplinary Counsel for the State Bar of Texas ("OCDC") that serves as the Prosecutor for the Commission for Lawyer Discipline.

In communicating with Texas Attorneys from all over the State, it is apparent that average solo practitioners, and small firms, believe neither the State Bar of Texas nor the grievance system that is self-regulated is in their best interest. When a judge who has never tried a civil much less a complicated disbarment case gets appointed to a grievance matter or a disciplinary prosecutor can have complete immunity from wrongful, intentional acts, there are changes that need to be made. For those who are concerned with how the SBOT operates and how best to protect the public but at the same time keep attorneys from being wrongfully prosecuted, this site is a place to have a discussion and to post information.

You will find on this site 25 Amicus Curiae Briefs, 106+ letters from attorneys, former judges, and the public. The site also includes 166 Client reviews and 40+ Peer reviews. Each person or document that appears on this site reflects that changes need to be made. Note the section on "Related Cases". The same is true for the Facebook page, "Hold the Office of Chief Disciplinary Counsel Accountable."

Another Facebook page is entitled, "State Bar of Texas Sunset Discussion Group". It has nearly 200 members and states as its purpose: "Discussions concerning whether Texas would be better off with a voluntary, rather than a compulsory, bar." Again, a wide assortment of members of this site discuss legal issues concerning the grievance process and other legal issues. A final site is: "Make the State Bar of Texas Relevant". I hope the Commission will spend some time perusing these sites because it will help keep it informed about what improvements in the grievance system are being suggested by the members of the State Bar.

Please see Ethics Expert Lillian Hardwick's letter posted on various websites for attorneys and the public to review and to encourage others to also send recommendations for improvements. We hope that careful attention will be made to the Recommendations from this widely recognized expert on the grievance process - par excellence. A copy of the letter is included. Her recommendations include:

RECOMMENDATION NO. 1: Judicial Training and Selection

In a recent matter, former Chief Justice of the Texas Supreme Court, Wallace Jefferson, appointed his former law school classmate, Juvenile Court Judge Carmen Kelsey to hear a Disbarment matter.

It is hard to fathom why Judge Kelsey was chosen other than she was a friend of Judge Jefferson. In her 20+ year career as a juvenile court prosecutor and then as a juvenile court judge, she never appeared in a civil court nor tried a civil matter. She had no experience with the civil court system as an attorney or judge, before the one in question. She admitted several times in the proceeding that she had no civil court experience. She did not understand certain terms ("Explain to me what supersedeas means?")

If the grievance system is to keep the election to civil district court an option, having judges who have no training or experience with the civil system is a travesty. If they are to be trained, it should be someone other than the OCDC who appears before them who does the training. Many of the 25 amicus briefs filed at www.ocdc-revealed.com opine how Judge Kesley simply did not know what she is

doing. The Supreme Court should address this lack of training and provide it by some entity or person other than the OCDC.

Another improvement would be to limit the selection of judges for discipline matters to those judges who understand that contract disputes and fiduciary obligations are rarely, if ever, disciplinary matters. It is hoped that you will recommend to the Legislature that the Judicial Appointment System for Judges be changed so that only qualified and experienced Judges will be appointed to hear disbarment cases. This training should be provided by someone other than the OCDC.

It may be helpful to the Commission to hear from one very experienced and knowledgeable Texas attorney, and how he sees the judicial selection for the grievance process: "David M. Stagner; It would be interesting and instructive to see how many of the district court disciplinary case[s] are prosecuted without hearing from a single witness in the CDC's case-in chief. In lawyer Bennett's case, the judge refused to listen to obviously qualified experts because "she didn't want anyone to tell her what to do" (I paraphrase, even though quoted) And, she walked out of the proceeding while Bennett's counsel was perfecting the record by an offer of proof. This erstwhile judge (I understand she was defeated in the last election) is too stupid to think this is the proper way to administer justice to a member of the bar. Her attitude was learned, but from whom is the real question. There is no transparency of how the judges in disciplinary trials are selected. And, I am curious if the Committee for Lawyer Discipline or member of the Office of Chief Disciplinary Counsel "instructs" during judicial meetings."

A second observation is made by another attorney: "David M. Stagner I couldn't agree more. At bottom, the Disciplinary Counsel's office has no real oversight. The worse judges I've experience in my 45 years of practice have been the several appointed to hear disciplinary cases in which I have been counsel. One wonders if these judges are appointed with implicit instructions toward a generally acceptable result. How are so many of these poor excuses for judicial officers consistently appointed? Power corrupts and absolute power corrupts absolutely." Again, a recommendation to address this lack of transparency in how judges are selected should be addressed. A recommendation should be made to the Texas Legislature to change how judges are selected to hear grievance matters. If there are any doubts about the need for changes in this area, please read the editorial opinions from the San Antonio Express News (posted at www.ocdc-revealed.com) about how unqualified Judge Kelsey was to hear any matter – much less a complicated grievance process matter.

RECOMMENDATION NO. 2: Review of Grievance System and Procedure

It is not working. On the ocdc-revealed.com site, up to 20+ examples of prosecutorial misconduct are listed. The vast majority of Bar members see the grievance system as targeting only solo practitioners and small firms. Any attorneys with a sophisticated practice or a larger firm have little to worry about from the OCDC. This claim is supported by the fact that no attorneys were disbarred in the Enron mess or in the Stanford International Bank criminal case. Numerous attorneys were involved in both cases. The only way that faith in the grievance system can be restored is for an outside entity or independent compliance program to evaluate the grievance process as the ABA recommended and this Committee considered and recommended in 2007.

As one very knowledgeable attorney posted on the Sunset Facebook page: "David M. Stagner; The institution of the bar has become self-serving and self-perpetuating. An institution that has lost touch with its mandatory members. Discipline and admission don't need a bar association. That's the job of the Supreme Court. The bar has excellent CLE, but it should compete as a voluntary association in the private sector. Why else do we need the State Bar of Texas? Is the contribution so clear that everyone admitted to the bar must be a member? Hey, I thought Texas (to the delight of the conservatives) was a right to work state."

Another attorney expressed it this way: "Nachael Foster: The SBOT applies discipline arbitrarily. When I went to the SBOT with a complaint that a lawyer had knowingly and willfully lied to a court by claiming that another court had already signed a child custody order, the SBOT stated that the behavior was not lack of candor towards the courts. Here, Robert S. Bennett is being disciplined for asking a higher court to review an arbitration involving a client. When the SBOT applies discipline in such obviously arbitrary ways, lawyers and the public lose faith."

It is hoped that you recommend that an independent body evaluate the Bar and the grievance system. This should be done before the Sunset Review is completed.

RECOMMENDATION NO. 3: Independent Counsel

I do not want to repeat what Ms. Hardwick stated in her June 16, 2015 letter, but all her suggestions should be given serious consideration. You should also read the Amicus Curiae brief she wrote at: www.ocdc-revealed.com. She also posted a letter on this same site about how confused Judge Kelsey was during the trial Judge Kelsey presided over. The first recommendation of Ms. Hardwick regarding how independent Counsel is needed for the Commission For Lawyer Discipline is very important. It borders on the absurd that the Commission will have the Chief Disciplinary Counsel sit at all the meetings, but a grieved attorney cannot even appear. It certainly appears that the Commission is

only interested in getting information from one source and this is not a balanced approach. This result in what Ms. Hardwick states is wrong and has “bizarre” outcomes.

The shift of the Burden of Proof also deserves your attention. The Amicus Brief of David Stagner at the OCDC site addresses this in detail. He has written:

“I think the burden of proof issue is important for two reasons. First, the court can simply not address it concluding that even under a preponderance of the evidence standard that the judgment of disbarment was a clear abuse of discretion and either reverse and render or reverse and remand. By definition, any burden of proof heavier than a preponderance of the evidence makes it more difficult to disbar a lawyer. Texas case law distinguishes between an action of reprimand against an attorney and the disbarment of an attorney. In Polk v the State Bar of Texas, 480 F.2d 998, 1001 (5th Cir., 1973) the Fifth Circuit states, "it must be plainly apparent that in Texas disbarment… Is treated as differing qualitatively from the lesser sanction of reprimand. . . “

Because a professional’s license often represents the fulfillment of extensive educational, training, and testing requirements, and because of the harsh and often stigmatizing consequences of a license revocation, some courts have concluded that the use of the clear and convincing standard of proof is constitutionally required. Of course, I said that authority in my brief. Interestingly, in a 1894 disbarment case of Scott versus state, the Texas Supreme Court stated (in dicta) that the evidence should sustain the charges on which the disbarment of attorney was sought "beyond a reasonable doubt, although it being not a criminal case."

Later decisions have held the standard for attorney disbarment in our disciplinary proceedings is preponderance of evidence. One is a 1933 Texas commission of appeals case, withholding approved by the Supreme Court, and the other an early 1990s Dallas Court of Appeals. Other Texas courts have written that the evidence against a licensed professional must "clearly sustain the charge" and must be "substantial," and "reasonably free from doubt." The incorrect burden of proof issue needs to be considered. Our rules provide specifically for a preponderance of evidence standard, but it is ambiguous whether that standard applies to disbarment. Just last year in Gaia v Galbraith, 451 s.w.3d 398, the 14th COA acknowledged that disbarment proceedings are “quasi-criminal.”

This should be recommended to the Texas Supreme Court.

RECOMMENDATION NO. 4: Maintaining Adequate Database

Regarding “Maintain and Share Sanctions Database” would greatly benefit all who are concerned with the grievance system.

Ms. Hardwick provides some excellent reasons why this information would be useful and why the OCDC may not want Evidentiary Panels and Courts to have this information.

RECOMMENDATION NO. 5: "Make the Procedural Rules Apply Across the Board"

This addresses concerns with the OCDC and how it is really not evaluated, reviewed, or even policed by the CFLD. The OCDC gets reined in only when BODA issues an opinion. This certainly raises questions about how the CFLD operates and who decided what it will decide.

RECOMMENDATION NO. 6: **"Rebut the Conclusion that the State Bar Targets Small Firms and Solos"**

Lillian Hardwick's statement about this area of perception and neglect needs no further comment.

This Sixth Recommendation is one that every attorney in the State supports: "Permit More of a Win to a Respondent Attorney who "Wins" a Grievance." The wins of Attorneys Peyman Momeni and Clarrisa Guajardo resulted in the expenditure of tens of thousands of dollars. Since the OCDC is not accountable to anyone and has never been sanctioned, there is no reason to act in a reasonable manner. Compensation should be paid.

RECOMMENDATION NO. 7: "Prevent Double-Dipping with Rule 8.04 (a) (1.)"

Again, I will let Ms. Hardwick speak for herself in her letter on this point.

RECOMMENDATION NO. 8: Prosecutorial Misconduct is Rampant
(http://www.latimes.com/local/politics/la-me-lying-prosecutors-20150201-story.html?track=rss#page=1)

In supporting this article, a Texas attorney states,

"What keeps going through my mind is that akin to officers of the court whose job and duty is to prosecute those citizens accused of a crime, the lawyers of the office of chief disciplinary counsel must always be guided with the fundamental and core value that is their job to see that justice is done, and not merely to cause a sanction. Once you stray from that core value, you have governmental lawyers behaving like Tim Bersch, his supervising lawyers, and now outside counsel. Coupled with the judge that has a reputation for rejecting plea agreements, she was going to, and up to now, has shown everyone that she's running the show. Your insupportable and unjustifiable disbarment did not negate the bar's obligation to see that justice was done. I submit that they had an ethical obligation to confess error, and then it the office of chief disciplinary counsel (and presumably their client-the committee on

lawyer discipline) that is unnecessarily delaying and making more costly resolution of your lawsuit. And, to whom are they account?"

"I represented a lawyer who was acting pro se and filed a motion to continue his disciplinary trial. He was disbarred, and then we discovered (actually my excellent legal assistant) that the order overruling the continuance motion was signed before the judge ever saw the motion. The OCDC, by mistake, sent only the order and later filed the motion and sent it to the judge. Reversed by the BODA, but very troubling."

RECOMMENDATION NO. 9: Correct Bad Faith Mediation

This has been my personal experiences with the OCDC:

"Many have asked what happened at the mediation and why the case was not settled. You have to understand that the 14th Court of Appeals entered an Abatement Order on July 10, 2014. This Order stated: "We have determined that this case is appropriate for referral to mediation, an alternative dispute resolution process." The Court's Rules on Mediation state as follows: "vi. Commitment to Participate in Good Faith. While no one is asked to commit to settle their case in advance of mediation, all parties commit to participate in the proceeding in good faith with the intention to settle, if at all possible."

For the Commission on Lawyer Discipline to think that an offer of a ten (10) year suspension with 9 years active suspension was fair and in good faith with an intention to settle was absurd. After the OCDC/CFLD presented their case at the March 2014 Disbarment trial, they wanted to settle for a one year probated sentence. Since I had done nothing wrong and not one witness (fact, expert, or former client) testified against me, I saw no reason to take the one year probated offer. I wish the San Antonio Express editorials about Judge Carmen Kelsey had been published a little earlier. There were other conditions that the CFLD wanted such as a letter of apology that came about after the mediation. So the bottom line was that the OCDC/CFLD never made an offer that was done in good faith with the intention to settle. This needs to be addressed by the Commission.

RECOMMENDATION NO. 10: IMPORTANCE OF WEBSITE: WWW.OCDC-REVEALED.COM

At the website, www.ocdc-revealed.com, the Commission will find the transcript of the trial and letters from supporters, along with ten individuals who attended the trial and/or were witnesses at the trial. You will also find our Motion for New Trial and other related examples of the OCDC committing

prosecutorial misconduct. Other examples of the OCDC/CFLD engaging in bad faith mediation will be submitted.

On the site, other examples of the OCDC engaging in prosecutorial abuse are given. Read what happened to Texas Attorneys Peyman Momeni and Daniel Patrick Smitherman and others.

RECOMMENDATON NO. 11: The Bar Associations are Failing

https://lawyerist.com/71507/bar-associations-failing-lawyers/

The author of this article disagrees with the Texas Bar President who said,

"As your president, I believe it is important that we are able to go to the Supreme Court and the Legislature and show them that the State Bar of Texas is an open book. We encourage participation and comment from all sectors of our profession and the public. We welcome scrutiny."

The Bar membership does not believe this. The public does not believe this.

RECOMMENDATION NO. 12: Complaints to be Sworn

The Texas Ethics Commission requires this for elected officials. Why aren't Texas Attorneys afforded the same protection as any Texas elected official? The State of Alaska requires a Sworn Complaint. This should be considered by the Commission.

We look forward to working with you, the Sunset staff and the Sunset Commissioners throughout this process. Thank you for the opportunity to provide input.

Respectfully submitted,

Robert S. "Bob" Bennett
Attorney at Law

From: Sunset Advisory Commission
To: Brittany Calame; Cecelia Hartley
Subject: FW: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Thursday, June 16, 2016 8:14:56 AM

-----Original Message-----
From: sundrupal@capitol.local [mailto:sundrupal@capitol.local]
Sent: Wednesday, June 15, 2016 7:30 PM
To: Sunset Advisory Commission
Subject: Public Input Form for Agencies Under Review (Public/After Publication)

Agency: STATE BAR TEXAS

First Name: Robert

Last Name: Bennett

Title: Attorney and Counselor At Law; Adjunct Professor Lone Star College - North Harris Co. Houston

Organization you are affiliated with: Hold the OCDC Accountable

City: Houston

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:
1. oppose the repeal of the referendum process: this is supported by the Texas Trial Lawyers Association;Texas Criminal Defense Lawyers Association; Texas Family Law Foundation.
2. oppose investigative Subpoena Power without judicial oversight; Supported by the Texas Criminal Defense Lawyers Association

Any Alternative or New Recommendations on This Agency:
I am very appreciative of the opportunity that you have provided for me to provide my recommendations. I have been in communication with thousands of Texas attorneys and some judges, and many lay persons, I have received extensive documentation about the Texas Grievance System that I hope will be helpful to the Commission. We have established a website that should be reviewed: www.ocdc-revealed.com and have active presence on Face Book: " Hold the Office of Chief Disciplinary Counsel Accountable." Finally, I have spoken and continue to speak with and before numerous Texas State Representatives and Senators about these suggested improvements. With the State Bar of Texas ("SBOT") facing Sunset Review , there is sufficient time for consideration to be given to make changes that would protect the public and enhance the SBOT. If this is not done, given the strong antagonism by many members of the Texas Legislature, and the vast majority of SBOT members, the SBOT should be put out of existence. With this in mind, I hope you will carefully consider the following:
BACKGROUND
I grew-up in scenic Amarillo, Texas (having been born in Phillips, Texas - that no longer exists). Attended Amarillo Junior College, studied overseas, and ended-up getting my B.A. and M.B.A. from George Washington University. While in D.C., I served as the Legislative Assistant to United States Congressman Patrick T. Caffery from New Iberia, Louisiana. I returned to Texas and received my Doctorate of Jurisprudence from the University of Houston Law Center in 1974. I was licensed to practice law on April of 1974

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The same is true for the Facebook site, " How To Hold the Office of Chief Disciplinary Counsel Accountable." Posting can be done there. Please help direct other wrongfully prosecuted attorneys to this site so we can get their information out. As Ayann Hirsi Ali has written: " There are times when silence becomes an accomplice of injustice." Now is the time to let your voice be heard.

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In her 20 + year career as a juvenile court prosecutor and then as a juvenile court judge, she never appeared in a civil court nor tried a civil matter.
She had no experience with the civil court system as an attorney or judge, before the one in question. She admitted several times in the proceeding that she had no civil court experience. She did not understand certain terms (" Explain to me what supersedeas means?") If the grievance system is to keep the election to civil district court an option, to have judges who have no training or experience with the civil system is a travesty. If they are to be trained, it should be someone other than the OCDC who appears before them who does the training. Many of the 25 amicus briefs filed at www.codc-revealed.com, opine how Judge Kesley simply did not know what she is doing. The Supreme Court should address this lack of training and provide it by some entity or person other than the OCDC. Another improvement would be to limit the selection of judges for discipline matters, to those judges who understand that contract disputes and fiduciary obligation are rarely if ever disciplinary matters. It is hoped that you will recommend to the Legislature that the Judicial Appointment System for Judges be changed so than only qualified and experienced Judges will be appointed to hear disbarment cases.
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A second observation is made by another attorney: " David M. Stagner I couldn't agree more. At bottom, the Disciplinary Counsel's office has no real oversight. The worse judges I've experience in my 45 years of practice have been the several appointed to hear disciplinary cases in which I have been counsel. One wonders if these judges are appointed with implicit instructions toward a generally acceptable result. How are so many of these poor excuses for judicial officers consistently appointed? Power corrupts and absolute power corrupts absolutely." Again, a recommendation to address this lack transparency in how judges are selected, should be addressed. A recommendation should be made to the Texas Legislature to change how judges are selected to hear grievance matters. If there is are any doubts about the need for changes in this area, please read the editorial opinions from the San Antonio Express News (posted at www.ocdc-revealed.com) about how unqualified Judge Kelsey was to hear any matter – much less a complicated grievance process matter.

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conservatives) was a right to work state." Another attorney expressed it this way: "Nachael Foster :The SBOT applies discipline arbitrarily. When I went to the SBOT with a complaint that a lawyer had knowingly and willfully lied to a court by claiming that another court had already signed a child custody order, the SBOT stated that the behavior was not lack of candor towards the courts. Here, Robert S. Bennett is being disciplined for asking a higher court to review an arbitration involving a client. When the SBOT applies discipline in such obviously arbitrary ways, lawyers and the public lose faith." It is hoped that you recommend that an independent body evaluate the Bar and the grievance system. This should be done before the Sunset Review is completed.

RECOMMENDATION NO. 3:

I do not want to repeat what Ms. Hardwick stated in her June 16, 2015 letter but all her suggestions should be given serious consideration. You should also read the Amicus Curiae brief at:
www.ocdc-revealed.com. She also posted a letter on this same site about how confused Judge Kelsey was during the trial Judge Kesley presided over. The first recommendation of Ms. Hardwick regarding how independent Counsel is needed for the Commission For Lawyer Discipline is very important. It borders on the absurd that the Commission will have the Chief Disciplinary Counsel sit at all the meetings but a grieved attorney cannot even appear. It certainly appears that the Commission is only interested in getting information from one source. This results in what Ms. Hardwick states is wrong and " bizarre" outcomes.

The shift of the Burden Of Proof also deserves your attention. I anticipate that the Amicus Brief of David Stagner will address this in detail. In part he has written:
"I think the burden of proof issue is important for two reasons. First, the court can simply not address it concluding that even under a preponderance of the evidence standard that the judgment of disbarment was a clear abuse of discretion and either reverse and render or reverse and remand. By definition, any burden of proof heavier than a preponderance of the evidence makes it more difficult to disbar a lawyer. Texas case law distinguishes between an action of reprimand against an attorney and the disbarment of an attorney. In Polk v the State Bar of Texas, 480 F.2d 998, 1001 (5th Cir.,
1973) the Fifth Circuit states, "it must be plainly apparent that in Texas disbarment… Is treated as differing qualitatively from the lesser sanction of reprimand. . . " Because a professionals license often represent the fulfillment of extensive educational, training, and testing requirements, and because of the harsh and often stigmatizing consequences of a license revocations, some courts have concluded that the use of the clear and convincing standard of proof is constitutionally required. Of course, I said that authority in my brief. Interestingly, in a 1894 disbarment case of Scott versus state, the Texas Supreme Court stated (in dicta) that the evidence should sustain the charges on which the disbarment of attorney was sought "beyond a reasonable doubt, although it being not a criminal case." Later decisions have held the standard and attorney disbarment our disciplinary proceedings is preponderance of evidence. One is a 1933 Texas commission of appeals case, withholding approved by the Supreme Court, and the other an early 1990s Dallas Court of Appeals. Other Texas courts have written that the evidence against a licensed professional must "clearly sustain the charge"
and must be "substantial," and "reasonably free from doubt." The incorrect burden of proof issue has been pretty easy to write. Our rules provide specifically for a preponderance of evidence standard, but it is ambiguous whether that standard applies to disbarment. Just last year in Gaia v Galbraith, 451 s.w.3d 398 the 14th COA acknowledged that disbarment proceeding are "quasicriminal."
This should be recommend to the Texas Supreme Court.

The Recommendation regarding " Maintain and Share Sanctions Database" would be of great benefit to all who are concerned with the grievance system.

Ms. Hardwick provides some excellent reasons why this information would be useful and why the OCDC may not want Evidentiary Panels and Courts to have this information.

The Fourth Recommendation, " Make the Procedural Rules Apply Across the Board"

This addresses concerns with the OCDC and how it is really not evaluated, reviewed, or even policed by the CFLD.

It is only when BODA issues an opinion does the OCDC get reigned in. This certainly raises questions about how the CFLD operates and who decided what it will decide.

The Fifth Recommendation states: " Rebut the Conclusion that the State Bar Targets Small Firms and Solos.

Her statement about this area of perception and neglect needs no further comment.

The Sixth Recommendation is one that every attorney in the State supports:
" Permit More of a Win to a Respondent Attorney who " Wins" a Grievance. The wins of Attorneys Peyman Momeni and Clarrisa Guajardo resulted in the expenditure of 10s of thousands of dollars. Since the OCDC is not accountable to anyone and had never been sanctioned, there is no reason to act in a reasonable manner. Compensation should be paid.

The Seventh Recommendation: "Prevent Double-Dipping with Rule 8.04 (a) (1.)."

Again, I will let Ms. Hardwick speak for herself in her letter on this point.

The eighth recommendation: Prosecutorial Misconduct is Rampant (http://www.latimes.com/local/politics/la-me-lying-prosecutors-20150201story.html?track=rss#page=1)

"What keeps going through my mind is that akin to officers of the court whose job and duty is to prosecute those citizens accused of a crime, the lawyers of the office of chief disciplinary counsel must always be guided with the fundamental and core value that is their job to see that justice is done, and not merely to cause a sanction. Once you stray from that core value, you have governmental lawyers behaving like Tim Bersch, his supervising lawyers, and now outside counsel. Coupled with the judge that has a reputation for rejecting plea agreements, she was going to, and up to now, has shown everyone that she's running the show. Your insupportable and unjustifiable disbarment did not negate the bar's obligation to see that justice was done. I submit that they had an ethical obligation to confess error, and then it the office of chief disciplinary counsel (and presumably their client-the committee on lawyer discipline) that is unnecessarily delaying and making more costly resolution of your lawsuit. And, to whom are they account?"
"I represented a lawyer who was acting pro se and filed a motion to continue his disciplinary trial. He was disbarred, and then we discovered (actually my excellent legal assistant) that the order overruling the continuance motion was signed before the judge ever saw the motion. The OCDC, by mistake, sent only the order and later filed the motion and sent it to the judge. Reversed by the BODA, but very troubling."
I will amend this letter and address the Prosecutorial Misconduct that is rampant with the OCDC. Bits of this can be seen in the 25 Amicus Briefs that have been filed. More is on the way.

the Ninth Recommendation : Correct Bad Faith Mediation;

"Many have asked what happened at the mediation and why the case was not settled. You have to understand that the 14th Court of Appeals entered an Abatement Order on July 10, 2014. This Order stated: " We have determined that this case is appropriate for referral to mediation, an alternative dispute resolution process." The Court's Rules on Mediation state as follows:
" vi. Commitment to Participate in Good Faith. While no one is asked to commit to settle their case in advance of mediation, all parties commit to participate in the proceeding in good faith with the intention to settle, if at all possible." For the Commission on Lawyer Discipline to think that an offer of a ten (10) year suspension with 9 years active suspension was fair and in good faith with an intention to settle, was absurd. After the OCDC/CFLD presented their case at the March 2014 Disbarment Trial, they wanted to settle for a one year probated sentence. Since I had done nothing wrong and not one witness (fact, expert, or former client) testified against me, I saw no reason to take the one year probated offer. Besides, Judge Carmen Kelsey would be fair and reasonable. I wish the San Antonio Express editorials about her had been published a little earlier. There were other conditions that the CFLD wanted such as a letter of apology that came about after the mediation. So the bottom-line was that the OCDC/CFLD never made an offer that was done in good faith with the intention to settle.

the Tenth Recommendation.

At the website, www.ocdc-revealed.com, you will find the transcript of the trial and letters from 70+ supporters, along with 10 individuals who attended the trial and/or were witnesses at the trial. You will also find our Motion for New Trial and other related examples of the OCDC committing prosecutorial misconduct. We are collecting other examples of the OCDC/CFLD engaging in bad faith mediation and would welcome your comments and examples - even if anonymous. On the site, other examples of OCDC engaging in prosecutorial abuse are given. Read what happened to Texas Attorneys Peyman Momeni and Daniel Patrick Smitherman and others. Should you want to contribute to an Amicus brief for the appeal, every member of the SBOT would benefit from that input. " the letters have grown to over 106+ and 25 Amicus Curiae have been filed.
Every attorney who handles Grievance Process cases comments on how the OCDC will not mediate in good faith.

the Eleventh Recommendation: The Bar Associations are failing.
https://lawyerist.com/71507/bar-associations-failing-lawyers/
-- "As your president, I believe it is important that we are able to go to the Supreme Court and the Legislature and show them that the State Bar of Texas is an open book. We encourage participation and comment from all sectors of our profession and the public. We welcome scrutiny." The Bar does not believe this. More to follow.

the eleventh recommendation: complaints to be sworn. The Texas Ethics Commission requires this for elected officials. Why aren't Texas Attorneys afforded the same protection as any Texas elected official? The State of Alaska requires a Sworn Complaint.

RSB

My Comment Will Be Made Public: I agree