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A Management Control Audit of the State Commission on Judicial Conduct

October 1996

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Key Points of Report

A Management Control Audit of the State Commission on Judicial Conduct

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Overall Conclusion

Management controls are generally effective at the State Commission on Judicial Conduct (Commission), but improvements are needed in administrative functions involving financial and human resources. The Commission provides oversight of approximately 3,500 judges in Texas. The Commission has the authority to investigate complaints against judges and to issue sanctions to judges when necessary.

Key Facts and Findings

- The Commission has adequately managed its program effectiveness, but some improvements are needed. The Commission sanctions judges at a relatively higher rate and at a relatively lower cost to taxpayers than other states with comparable commissions. However, the Commission should consider developing criteria to ensure consistency among decisions. Additionally, the Commission needs to administer both training and sanctions in certain cases.
- Human resources policies, procedures, and controls need improvement. The Commission has not documented important policies and procedures, and formal performance evaluations have not been conducted for Commission employees.
- Controls over purchasing and cash disbursements need improvement to ensure proper procedures are followed.
- The Commission has adequate information systems which are used for management decision-making. Control weaknesses in performance measures have been corrected, but similar controls need to be implemented for all data to correct minor discrepancies in the automated system.

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This audit was conducted in accordance with Government Code, §§ 321.0132 and 321.0133.

Executive Summary

The State Commission on Judicial Conduct's (Commission) management controls generally promote the accomplishment of its statutory and constitutional directives, but some control weaknesses exist.

Sanction rates and operating costs at the Commission compare favorably to sanction rates and operating costs of other states. However, some improvements are needed to maximize consistency and effectiveness of sanctioning decisions. Management controls over administrative functions involving financial and human resources need improvement. The Commission has established controls over its information systems which are used for management decision-making.

The following objectives of the Commission are stated in its 1995 Annual Report: (1) to preserve the integrity of all judges in the state, (2) to ensure public confidence in the judiciary, and (3) to encourage judges to maintain high standards of both professional and personal conduct. The Commission regulates approximately 3,500 judges in Texas including justices of the peace, county judges, county court at law judges, masters, district judges, and appellate court judges. The Commission had a fiscal year 1996 operating budget of \$699,554 and 14.6 full-time equivalent employees at year end. The Commission averaged 12.6 employees over fiscal year 1996 and expects to reach 15.5 employees during fiscal year 1997.

The State Commission on Judicial Conduct in Texas Appears to Be Functioning in an Effective Manner, but Some Improvements Are Needed

Statistics of the State Commission on Judicial Conduct in Texas compare favorably with those of other states. The Commission sanctions judges at a relatively higher rate and at a relatively lower cost to taxpayers than other states with comparable commissions such as New York and California. However, the Commission should consider developing criteria for sanctions to ensure consistency among decisions. Additionally, the Commission needs the ability to administer both training and sanctions in individual complaints to increase the effectiveness of sanctioning decisions.

Human Resources Policies, Procedures, and Controls Need Improvement

The Commission has not documented important policies and procedures, and formal performance evaluations have not been performed at the Commission. Human resources is an important area for the Commission on Judicial Conduct. In 1995, salaries and payroll-related expenses were \$458,583—78 percent of the Commission's total expenditures. The Commission's size has recently increased as a result of adding support staff and attorneys. This in turn has increased the need for formalized policies and procedures.

Executive Summary

Purchasing and Cash Disbursement Control Weaknesses Were Identified

Controls over purchasing and cash disbursements need improvement to ensure proper procedures are followed. The Commission has conducted reviews of disbursements, but has not documented follow-up on discrepancies found during their review.

The Commission Has Adequate Information Systems Which Are Used for Management Decision-Making

Management information systems are consistently used to make management decisions. Information relevant to management decision-making is tracked by the Commission's automated case management system and other manual systems. Commission staff members provide adequate information to Commissioners. Performance measures control weaknesses have been corrected, but similar controls need to be implemented for all data to correct minor discrepancies in the automated system. While most information needed has been tracked, the Commission has not electronically "searched" Texas newspapers for allegations of judicial misconduct.

The Backlog of Pending Cases Is an Issue for Further Study

Backlogs of pending cases have been monitored but still need to be reduced. This is

an area that needs to be monitored on a continuing basis by the Commission and by other interested parties. The Commission has taken action to reduce the backlogs through monitoring pending cases, increasing staff, and redistributing the caseload among attorneys. The Commission should continue to closely monitor backlogs of pending cases and take appropriate action to reduce them.

Summary of Management's Responses

Management generally concurs with the findings and recommendations contained in this report. The Commission has already begun implementing most of these recommendations.

Summary of Audit Objective and Scope

The objective of this audit was to evaluate the existing management control systems within the State Commission on Judicial Conduct to identify strengths and opportunities for improvement.

The scope of this audit included consideration of the Commissioners' and executive management's oversight of and attention to management controls. Management control areas reviewed include:

- Policy management
- Performance management
- Resource management
- Information management

Section 1:

The State Commission on Judicial Conduct in Texas Appears to Be Functioning in an Effective Manner, but Some Improvements Are Needed

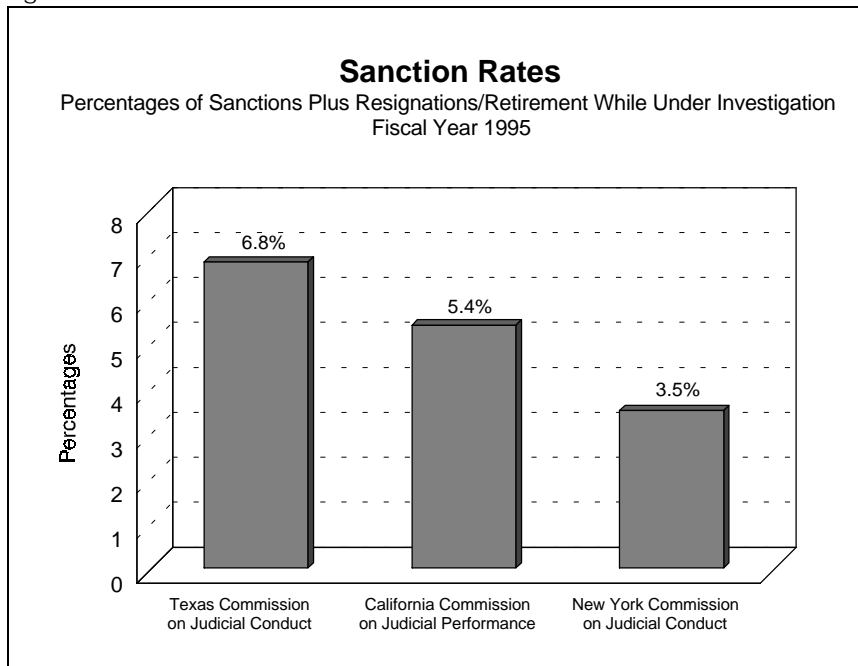
Statistics of the State Commission on Judicial Conduct (Commission) compare favorably with those of other states. The Commission sanctions judges at a relatively higher rate and at a relatively lower cost to taxpayers than other states. However, some improvements are needed to maximize the consistency and effectiveness of sanctioning decisions. The Texas Constitution grants authority to the Commission to administer punitive mechanisms for enforcing judicial ethical standards which are known as sanctions.

Section 1-A:

The State Commission on Judicial Conduct in Texas Has a Higher Sanction Rate and Lower Operating Costs Than Similar Commissions in Other States

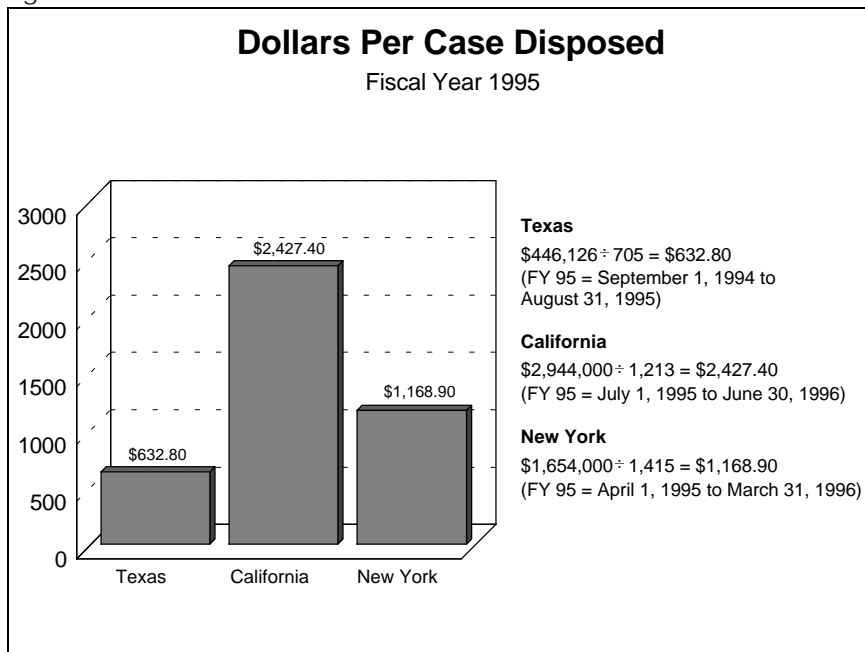
Texas sanction rates are higher than those of similar commissions in other states. The Texas Commission gave sanctions for 6.8 percent of complaints received. Certain other states with comparable commissions gave sanctions from 3.5 percent to 5.4 percent of complaints received. (See Figure 1.)

Figure 1



The Commission has monitored its sanction rates and has compared them to the number of cases disposed since 1983. Additionally, the Commission has monitored its staffing needs and operating costs. This monitoring and attention has resulted in higher sanction rates and lower operating costs for the agency.

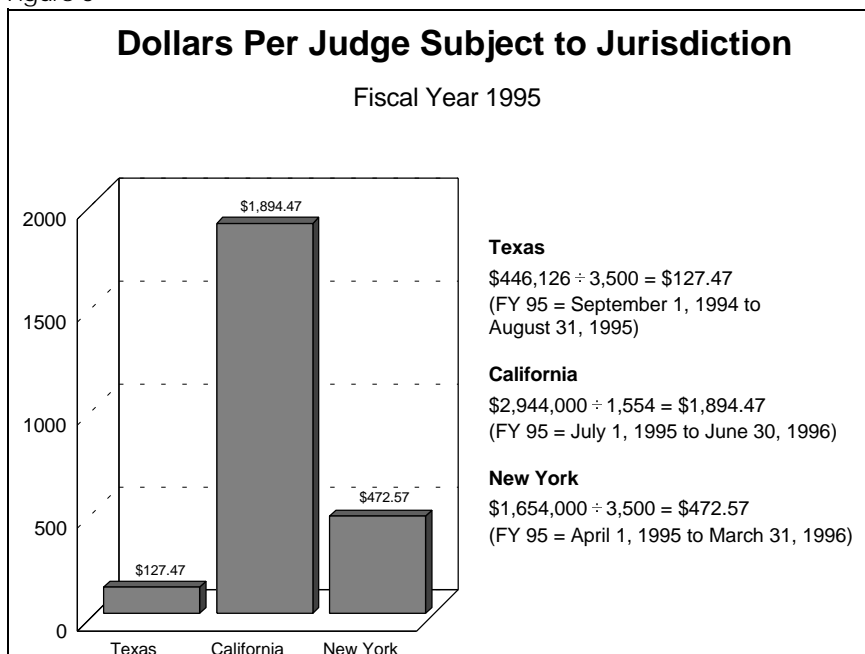
Figure 2



The Commission in Texas had lower costs per case disposed than other comparable states. In Texas, the cost of disposing of a case was \$632.80 using fiscal year 1995 appropriated dollars and number of cases disposed. In two other states with similar commissions, the cost to dispose of a case ranged from \$1,168.90 to \$2,427.40. (See Figure 2.)

Texas had lower costs per judge in its jurisdiction than other comparable states. In Texas in fiscal year 1995, \$127.47 was budgeted per judge in its jurisdiction of 3500 judges. In New York and California, budgeted dollars per judge in jurisdiction were \$472.57 and \$837.13, respectively. (See Figure 3.) For information comparing the number of cases disposed, budgets, and the number of judges subject to jurisdiction, see Appendix 2, page 20.

Figure 3



Section 1-B:

The Commission Should Consider Developing Criteria for Sanctions

Without criteria, there is no assurance that sanctions will be consistent among cases and Commissions. Sanctions are punitive mechanisms used to enforce judicial ethical standards.

The State Bar of Texas Commission for Lawyer Discipline uses criteria when making sanctioning decisions for Texas attorneys. For example, the State Bar criteria prohibit use of private reprimands when the misconduct has resulted in substantial injury to the client, the public, the legal system, or the profession. These criteria ensure consistency in decision-making, and they ensure that sanctions given are appropriate. Commissions on judicial conduct in other states and other Texas boards contacted have not used criteria to make sanctioning decisions. For examples of criteria used by the State Bar of Texas, see Appendix 3, page 21.

Recommendation:

The Commission should consider developing criteria to ensure consistent and appropriate decision-making when sanctioning judges. The Commission could consult with the State Bar of Texas Commission for Lawyer Discipline when developing its criteria.

Management's Response:

We accept this recommendation.

We will consider developing criteria to ensure continuing consistency of Commission actions. We will consult with other judicial conduct commissions nationwide regarding this issue. We will review the provisions in the Texas Constitution which may allow or disallow such criteria.

Section 1-C:

The Commission Should Be Able to Administer Both Sanctions and Training in Individual Complaints

Training should be a remedy used to rehabilitate judges rather than a sanction to punish them. Training is currently considered a sanction; therefore, the Commission cannot issue training in addition to another form of sanction. Rehabilitation, in addition to sanction, would be more effective in preventing misconduct from recurring than either rehabilitation or sanction alone. Training is generally used to educate and provide learning. The sanction should serve as punishment for the misconduct of the judge, while training should serve to educate and rehabilitate the judge.

Following is an example of the need for both training and sanction for a judge. A judge had six different complaints against him for various acts of misconduct. The Commission sanctioned the judge with training. It was clear that the judge needed rehabilitation through training, but he may have also needed the punishment of another type of sanction.

Training has been considered a sanction due to language in the Texas Constitution article 5, section 1-a (8) which implies that training is a sanction. Other sanctions listed in the Texas Constitution include: private admonition, private warning, private reprimand, public admonition, public warning, public reprimand, and public censure.

Recommendation:

The Commission needs to administer both sanctions and training in certain cases. The Commission could develop ranges of training hours to be given for each type of sanction a judge receives depending upon the severity of the sanction. The Commission should obtain an Attorney General Opinion to determine if a judge can receive training for rehabilitation purposes when another sanction is given under the current Texas Constitution.

Management's Response:

We accept this recommendation.

We are in agreement with the audit that it would be a useful rehabilitative and preventive tool for the Commission to be able to issue a private or public admonition, warning or reprimand and require that the recipient obtain additional education. We believe that such authority would be beneficial to both the judge and the public if the Commission were allowed continued discretion and flexibility in tailoring the additional education to the specific needs of the individual case being assessed by the Commission. We will request an Attorney General's opinion on the subject and abide by the results.

Section 2:

Human Resources and Cash Disbursement Controls Need Improvement

The Commission has not documented important policies and procedures, and formal performance evaluations have not been performed at the Commission. Human resources is an important area for the Commission. In 1995, salaries and payroll-related expenses were \$ 458,583—78 percent of the Commission's total expenditures. The Commission's size has recently increased as of a result of adding support staff and attorneys. This in turn has increased the need for formalized policies and procedures.

Section 2-A:

Human Resources Policies and Procedures Were Not Documented in Several Important Areas

The Commission did not have a human resources manual or policies and procedures manual; however, the Commission had a few agency policies in its Annual Report, management directives documented in memo form, a safety and health manual, and a risk management manual. The following policies and procedures were not documented at the Commission:

- Sexual harassment
- American with Disabilities Act (ADA)
- Family and Medical Leave Act (FMLA)
- Grievance/Complaint procedures
- Conflict of interest
- Disciplinary action
- Dual employment
- Nepotism
- Policies for training employees
- Policies for performance evaluation

Policies and procedures help ensure the Commission is clearly communicating expectations of its employees and promoting compliance with applicable federal and state laws and regulations. Personnel policies and procedures inform employees about rules and regulations, including requirements established by state or federal law.

A detailed sexual harassment policy that is clearly communicated with the written support of executive management provides a solid foundation for an effective program against sexual harassment. This program should include a complaint procedure, an investigative strategy that protects the privacy interests of the involved parties, required periodic training for all employees, and employee-awareness programs that communicate the agency's policies. Such actions taken by the Commission could reduce the risk of negligence by the Commission in sexual harassment lawsuits.

Conflict of interest and dual employment policies are needed at the Commission. It is important to have clear policies on conflict of interest and dual employment to ensure that conflicts with Commission work are avoided. Several Commission employees are attorneys, and some work part-time at the Commission. The policies should indicate what constitutes a conflict of interest with Commission work and should require disclosure of possible conflicts and dual employment.

Recommendation:

The Commission should develop policies and procedures for the areas listed above. The Commission should provide copies of the policies and procedures to all employees. A form should be signed by all employees stating that they have received

a copy of the policies and procedures and that they will take the time to read them. In addition, training for sexual harassment should be required for all employees.

Management's Response:

We accept this finding.

In the past the Commission has referred to the Appropriations Act in lieu of a human resource manual or policies and procedures manual. A new position was created and advertised and an employee with eighteen years of Human Resource Management experience was hired effective July 8, 1996. One of the duties of this position is to develop an Employee Handbook of human resource policies and procedures.

To date we have completed a draft of six of the ten policies listed in the audit report as indicated below:

*Sexual Harassment
Americans with Disabilities Act (ADA)
Family and Medical Leave Act (FMLA)
Grievance/Complaint Procedures
Conflict of Interest
Dual Employment*

The other four policies will be written as timely as possible. All employees will receive a copy of this Employee Handbook when it is completed along with a statement for them to sign and return acknowledging their responsibility to read it. Training for sexual harassment will be a requirement for all employees.

Section 2-B:

The Commission Has Not Conducted Formal Performance Evaluations of Support Staff or Attorneys

Without evaluation of employee performance, the following risks are present:

- Employees may be unaware of good performance or substandard performance.
- Employment action decisions such as promotion, demotion, termination, and merit raises may not be supported by sufficient and documented performance information.
- Employees may not receive needed training and development to improve performance and to address performance issues.

Written performance evaluations should be conducted at least one time per year. Evaluations would encourage good performance and correct and discourage substandard performance. Additionally, they would provide a foundation for future

human resources decisions and provide a basis for the employee's training and future development.

Recommendation:

The Commission on Judicial Conduct should develop an evaluation system for attorneys and support staff. Specific job dimensions should be considered when developing the evaluation system. Evaluations should include specific examples of each employee's performance. Evaluations should be discussed with the employee, and signed and dated by both the employee and supervisor. Evaluations should support employment actions including termination, demotion, promotion, and merit decisions.

Management's Response:

We accept the finding.

We are fully aware of the risks cited. Even though the Commission does not have formal, documented performance evaluations, the Executive Director has evaluated employee performance and ensured that each employee was aware of his or her good performance or performance problem. The small size of the agency has allowed for daily contact with the Executive Director and has afforded opportunities for work evaluations. We will endeavor to make appropriate documentation of work evaluations for all Commission staff.

Section 2-C:

Purchasing and Cash Disbursement Control Weaknesses Were Identified

Controls over cash disbursements and purchasing need improvement to ensure proper procedures are followed. For one of five purchases reviewed, the Commission did not purchase the item from the lowest bidding vendor. Written justification for this purchase was not attached as required by the General Services Commission (GSC). When purchasing from a vendor who did not submit the lowest bid, a written justification is required by GSC. Only five purchases during fiscal year 1995 were large enough to require use of the bidding process.

Of 20 cash disbursements tested, one of the vouchers tested had a company name on the warrant stub that differed from the company name on the invoice. A copy of the warrant was not kept, and there was no other documentation to support the name change, so it was not possible to tell if the warrant went to the same address. The payee identification numbers were the same. Another voucher went to the same company name, but to a different address than listed on the invoice. A copy of the warrant was kept, but documentation did not indicate that the discrepancy had been investigated by the Commission. The Commission has conducted reviews of

disbursements but has not documented follow-up on discrepancies found during their review.

Recommendation:

The agency should document their reasons for awarding a bid to a vendor who is not the lowest bidder. The Commission should document discrepancies found during its review of disbursements. Once discrepancies have been identified, the Commission should follow up with vendors to resolve the discrepancies and document those resolutions.

Management's Response:

We accept this recommendation.

- 1) *The Commission will attach written justification to purchases in which an item is not purchased from the lowest bidding vendor. A contemporaneous internal memorandum is attached to the paperwork for the purchase noted in the finding. The memorandum, directed to agency management, describes bid specifications and vendor responses and implies a rationale for the agency's choice of vendor. The Commission regrets that the memorandum was not explicit in its justification for the choice of vendor. In the future, greater care will be given that written material justifying a vendor choice be explicit.*
- 2) *The Commission accepts the recommendation to document discrepancies found during its review of disbursements.*

The discrepancies are attributable to a need to update or add a new "mail code" to the tax identification number of different vendors. In our experience, these "mail code" discrepancies fall into 3 categories: (1) a payee has moved, (2) a payee has changed its name, (3) a payee has both moved and changed its name.

The agency will learn to update vendor records "in-house." To that end, the agency has requested and received the Comptroller's Texas Payee Information System (TPIS) Advanced Training Manual, published in April 1996. Additionally, staff is registered in the next TPIS training session, a session conducted by the Comptroller's Office.

Section 3:

The Commission Has Adequate Information Systems Which Are Used for Management Decision-Making

Management information systems are consistently used to make management decisions. Information relevant to management decision-making is tracked by the

Commission’s automated case management system and other manual systems. While most information needed has been tracked, the Commission has not electronically “searched” Texas newspapers for allegations of judicial misconduct.

Section 3-A:

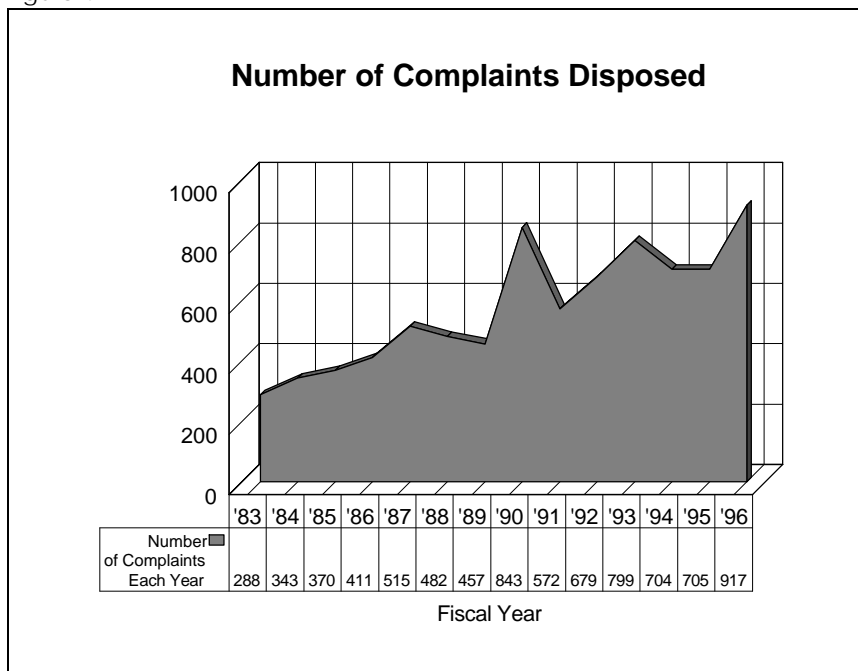
The Commission Has Used Information Systems to Make Decisions

Examples of the Commission’s use of management information include the following:

- The Commission determined that additional staff were needed to keep sanction rates at the same level when the number of cases disposed increased.

- The Commission determined that it was more cost effective to allow resignations than to pursue removal of judges by determining the cost to remove a judge.

Figure 4

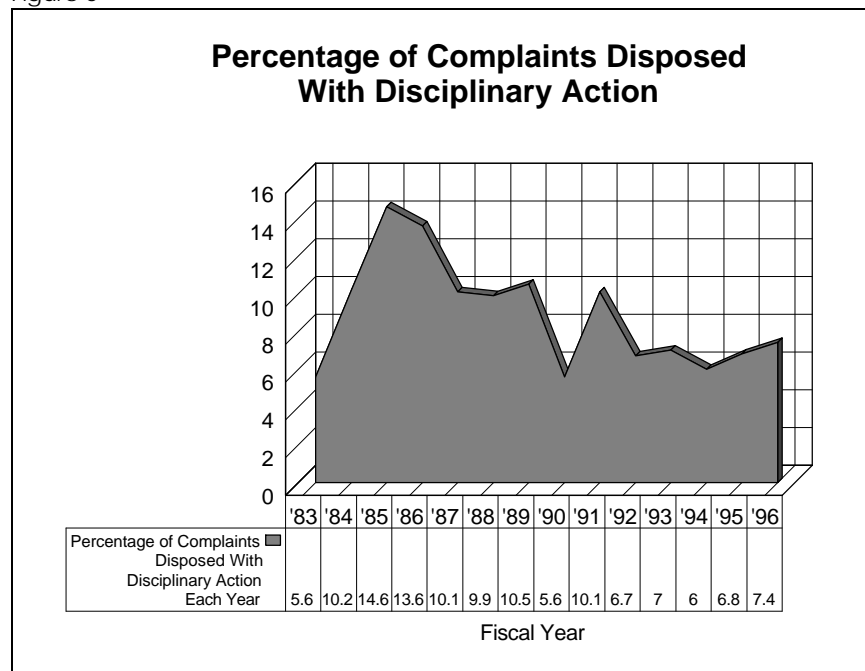


Using management information, the Commission determined that additional staff were needed to keep sanction rates at the same level when the number of cases disposed increased. The Commission realized in fiscal year 1993 that the number of complaints filed were increasing. This meant that more cases would be disposed. Based on information from 1990, the Commission determined that an increase in dispositions, while staff size remained constant, resulted in a

decrease in the sanction rate of cases. (See Figures 4 and 5.) To prevent a decrease in the sanction rate, the Commission requested and received additional staff. Figures 4 and 5 demonstrate that an increase in dispositions of cases resulted in a decrease in the sanction rate when staff size was held constant.

The Commission used management information to determine that resignations have been more cost effective than the removal process and have achieved the same result.

Figure 5



The Commission has a policy of accepting the resignations of judges who are under investigation if offered. This policy was developed based on the cost to remove a judge. The cost to remove a judge (not including the time expended by Commission attorneys on the case) is approximately \$39,454. Due to the Commission's decision to allow resignation rather than seek removal, we estimate an annual cost savings of \$140,000, which is 31 percent of the Commission's fiscal year 1995 appropriations. Cost information is needed and useful when making policy decisions.

Commission controls prevent judges who resign from returning as visiting judges. The Commission requires resigning judges under investigation, who would otherwise be eligible to return as visiting judges, to sign a letter stating that they will never serve as a judge again. Visiting judges are judges who have retired or resigned but serve as substitute judges for appellate and district court judges who cannot be present to hear cases. If a judge returns to the bench after resigning, the Commission has a policy to proceed with the investigation that was underway when the judge resigned.

Section 3-B:

The Commission's Automated Information System Provides Useful Case Information

Several reports are used by the Commission on a regular basis to make case management decisions. Many reports can be printed from the agency's automated case management system. For example, each attorney receives a list of pending cases which are assigned to him or her. This list is received each time the attorney is assigned a new case. Pending lists for each attorney are monitored by executive management.

Reports can be generated by the case management system through queries of that system. The Commission developed a computer data sheet which is in case files as a paper form and is used in their automated case management system. This sheet is completed by the attorney responsible for the case, and it is entered into the system by a staff member. The information codes on the data sheet enable the Commission to query a of cases in certain categories. For example, all cases having a certain nature of

complaint such as “abuse of discretion” can be queried to determine the final action for each case. Using this automated case management system, the agency can quickly provide a list of similar cases with the same type of judge to see what sanctions occurred in the past. This information is valuable to decisionmakers and attorneys investigating the cases. The Commission can also query the system to determine whether other complaints and sanctions have been brought against a particular judge when a new complaint is received. According to the Commission, several other states use this computer data sheet developed by the Texas Commission on Judicial Conduct as a model for their own automated case management systems.

Section 3-C:

Commission Staff Members Provide Adequate Information to Commissioners

The Commissioners stated that information provided by staff is adequate for informed decision-making in most cases. If not, Commission members ask for more information which is promptly provided by staff. The case information provided to the Commission by staff is timely, and an easy-to-use format has been developed in response to Commission directives. A current caseload report was prepared for the Commissioners which includes projections of pending caseload at the end of August 1996.

The Director’s Report is presented to Commissioners at every Commission meeting. Other information presented to Commissioners at each meeting includes an agenda of the meeting, minutes and copies of sanctions from the previous meeting, investigative information about the cases on the agenda, reports of training received by judges who were required by sanction to attend training, and panel assignments for appearances of judges. Summaries (or briefs) of each case to be presented at the meeting are included in Commissioners’ materials. Supporting investigative documentation is attached to each agenda summary.

Section 3-D:

Performance Measures Are Useful and Control Weaknesses Identified in a Recent Performance Measures Audit Have Been Corrected; However, Reviews and Reconciliations of Other System Information Are Needed to Correct Minor Discrepancies in Agency Data

Performance measures are used by and useful to the Commission. The performance measures adopted by the Commission are based on information that has been tracked for its annual report since 1983. The Commission had already been tracking this information and using it to make management decisions prior to the development of performance measures.

A follow-up review of control weaknesses identified in the July 1996 report, *An Audit Report on Performance Measures at 20 State Agencies and 1 Educational Institution*

(SAO Report No. 96-071), determined that control weaknesses have been corrected by the Commission. Prior to the performance measures audit, no review occurred after case dispositions were entered into the case management system. A review is needed to ensure that information in the system is consistent with board minutes from the actual Commission meetings where sanctioning decisions were made. To correct the control weaknesses, the Commission has begun reviewing the information in the case management system quarterly. This quarterly review and reconciliation occurs prior to submitting data to the Automated Budget Evaluation System of Texas (ABEST II) to ensure that performance measures information is accurate.

However, only performance measures data is reviewed and reconciled quarterly. Final actions and other information in the system have not been reconciled with board minutes. Reconciliations should be followed by an update of the automated system so that the system and the board minutes are consistent. The differences between numbers in the board minutes and numbers in the system are not material, but a review and reconciliation of all information will ensure accuracy.

Recommendation:

The Commission should conduct supervisory reviews of all system information after data is entered into the case management system. These reviews should include reconciliation of the data in the case management system with the board minutes. Once the reconciliation has been performed, the automated case management system and case files should be updated to reflect the reconciliation changes.

Management's Response:

We accept this recommendation.

The Commission will accept the recommendation to conduct supervisory review of system information after data is entered into the case management system. This review will include reconciliation of data in the case management system with the board minutes. The automated case management system and case files will be updated to reflect and document reconciliation changes.

*The discrepancies between numbers in board minutes and numbers in the automated system are attributable to the agency's need to update and expand the **Computer Data Sheet** used to record case file information for entry into the agency's database. The Commission will make the revision of the **Computer Data Sheet** a priority. The reconciliation between minutes information and database information will undergo supervisory review.*

Section 3-E:

The Commission Should Electronically “Search” Texas Newspapers for Allegations of Judicial Misconduct

Commission staff and management have occasionally identified judicial misconduct issues in their own personal newspapers, but formal searches of other Texas newspapers have not been conducted by the Commission. Formal searches are needed to identify possible issues of judicial misconduct that may not be reported to the Commission through the regular complaint process. The Commission is challenged by article 5, section 1-a (7) of the Texas Constitution to keep itself fully informed of circumstances relating to the misconduct or disability of particular judges.

Recommendation:

The Commission should begin conducting electronic searches of Texas newspapers to identify potential misconduct. The Commission could conduct these searches themselves or subscribe to a service which will conduct the searches for them on a routine basis.

Management’s Response:

We accept this recommendation.

The Commission accepts the finding as a valid consideration and will follow the recommendation to conduct electronic searches of Texas newspapers to identify potential judicial misconduct. Although the Commission currently has preliminary plans to set up Internet access that would enable the agency to conduct such research, the Commission will evaluate the benefits of subscribing to a service that could conduct the searches.

Section 4:

Backlogs of Pending Cases Have Been Monitored but Still Need to Be Reduced

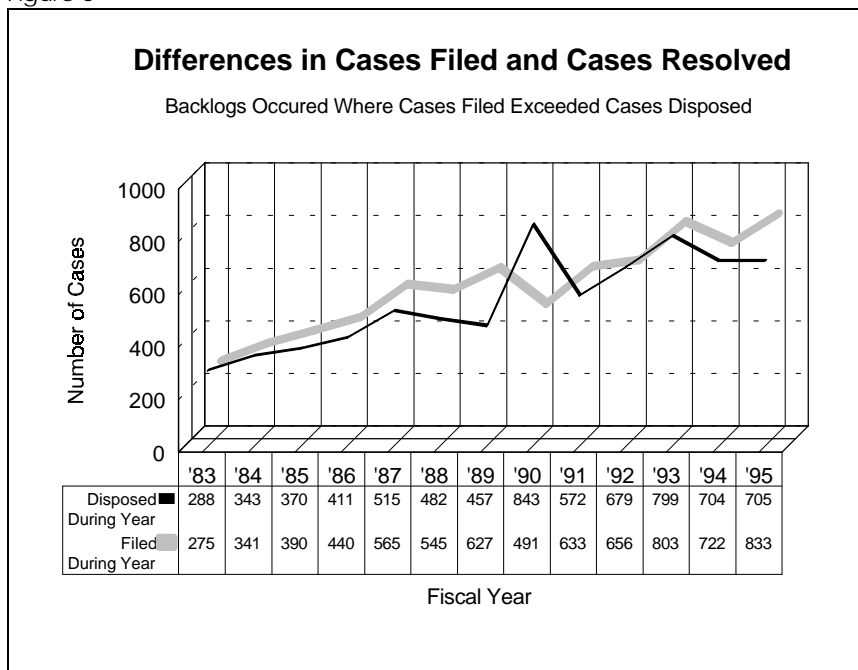
Backlogs of pending cases need to be monitored on a continuing basis by the Commission and by other interested parties. The Commission has taken action to reduce the backlogs of pending cases through monitoring pending cases, increasing staff, and redistributing the caseload among attorneys. The Commission made the decision to increase the number of staff attorneys as a result of increases in the number of complaints received and other management information. These additional attorneys should assist the Commission in reducing the backlogs.

A list of all pending cases with the date received and attorney assigned can be retrieved from the automated case management system. The oldest pending case on the list was received September 16, 1994. At the time of the audit it was one year and ten months old. Fifty-one cases were over one year old. One hundred fifty-seven cases were over six months old. The backlog of cases for fiscal year 1995 in the annual report amounted to approximately 128 cases.

Reasons for cases pending for more than one year varied. Some of the reasons indicate that resolving all backlogged cases within a certain time frame would not be possible. According to the Commission, some reasons for these cases being over a year old are that (1) if a serious complaint has been received against a judge, an older pending case

(which on its own might have been dismissed) may be held as a companion complaint with the more serious one, (2) the case is taken to formal proceedings, (3) the judge is under criminal prosecution—the Commission may defer a case while it is under criminal investigation and prosecution, or (4) the judge has been suspended. The Commission estimated the number of cases that would be older than one year on August 31, 1996. Their estimate amounted to 9 cases in formal proceedings processes, 21 cases under full investigation, and 1 case in the preliminary investigation stage.

Figure 6



Recommendation:

The Commission should continue to closely monitor backlogs of pending cases and take appropriate action to reduce the backlogs. Executive management should continue to redistribute cases to other attorneys as needed. Executive management should also consider backlogs when assigning new cases to attorneys with backlogged cases.

Management's Response:

We accept this recommendation.

The Commission accepts this recommendation to continue to closely monitor backlog of pending cases and to continue to redistribute cases as needed. The Commission has always recognized that the timeliness of the disposition of complaints is of critical importance. To monitor and evaluate case loads, the Commission has utilized a breakdown of cases 0-3 months old, 3-6 months old, 6-9 months old, 9-12 months old, and those cases over a year old. Such a breakdown of case ages allows for an overview of all pending cases and pinpoints buildup of cases at a particular age level which may need additional management. Periodically, during regular Commission meetings, the members are presented with statistics regarding the age breakdown of cases. As needed, the Commission members have lengthened the duration of their meetings to accommodate the presentations of more cases.

It should be noted that the age of a case is not determinative that a case has gone unmanaged. There are various factors such as the cooperation of third parties during the investigation, the continuance of filings from a complainant regarding a judge, the health of the judge and other considerations that might attribute to the age of the case but which would not indicate that a particular case has not been handled in a timely manner. Rush investigations have, in the past, lowered the sanction rate of Commission actions and the Commission's effectiveness in reviewing judicial misconduct.

Objective, Scope, and Methodology

Objective

Our audit objective was to evaluate the existing management control systems which enable the State Commission on Judicial Conduct to accomplish its statutory and constitutional directives. We evaluated control systems in place as of August 1996. We also followed up on the State Auditor's report, *Performance Measures at 20 State Agencies and 1 Educational Institution* (SAO Report No. 96-071, July 1996).

Management controls are the policies, procedures, and processes used to carry out an organization's objectives. They should provide reasonable assurance that:

- Program effectiveness is achieved.
- Assets are safeguarded and efficiently used.
- Reliable data is reported.
- Legislative and constitutional mandates are achieved.

Scope

The scope of this audit included consideration of the following control areas:

- Policy management
- Performance management
- Resource management
- Information management

Work in each area was developed after conducting a risk assessment of relevant issues. Emphasis was placed on the program effectiveness of the Commission in response to a legislative committee request.

Methodology

During the course of the audit, we reviewed performance data, financial data, policies and procedures, criteria from the State Bar of Texas, and annual reports of the Commission and of similar commissions in other states. We gained an understanding of how each control system should work. Tests were then performed to determine if the control systems were operating as described. Finally, the results were evaluated against established criteria to determine system adequacy and to identify opportunities for improvement.

Evidence was gathered primarily through documentation review, financial analyses, interviews, and observations of policies and procedures. Systems were tested by comparison of the intended and actual processes and selection and testing of judgmental samples.

The following criteria were used to evaluate the control systems:

- Statutory and constitutional requirements
- General and specific criteria developed by the State Auditor's Office Inventory of Accountability Systems Project
- State Auditor's Office Project Manual System: The Methodology
- *The Guide to Performance Measurement*
- Annual reports from other states with judicial conduct commissions and discussions with directors of other states' commissions
- State Bar of Texas Commission for Lawyer Discipline Sanctioning Criteria
- The Texas Research League's *Inventory of Texas Basic State Human Resource Management Statutes*, September 1995

Other Information

Fieldwork was conducted from July 22, 1996, to August 23, 1996. The audit was conducted in accordance with applicable professional standards, including Generally Accepted Government Auditing Standards. The audit work was performed by the following members of the State Auditor's Office staff.

- Andrea L. Archer, JD, MBA (Project Manager)
- Jennifer A. Jupe
- Rachel O. Carmona
- Verma L. Elliott, MBA, Quality Control Reviewer
- Charles R. Hrcir, CPA (Audit Manager)
- Deborah L. Kerr, Ph.D. (Director)

Comparisons of Statistical Information Among States

Figure 7

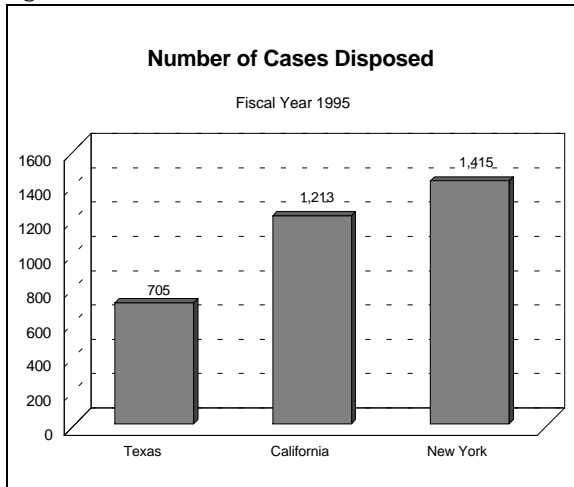


Figure 8

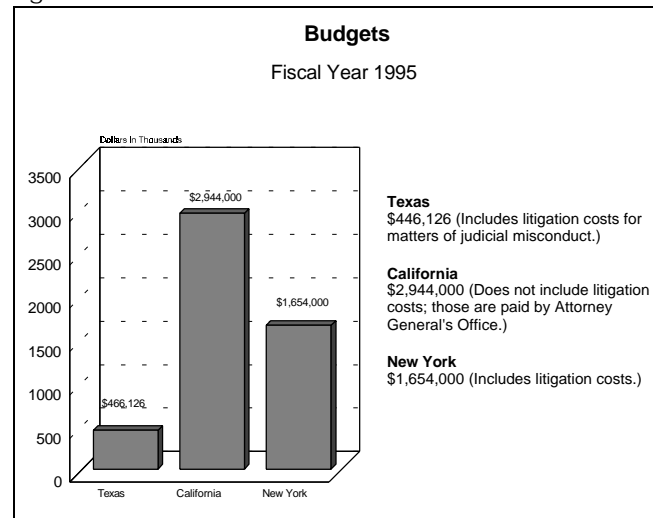
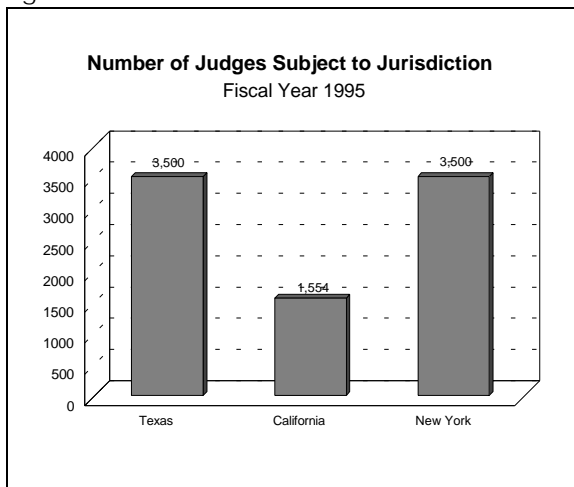


Figure 9



State Bar of Texas Sanction Criteria

Following is criteria developed by the State Bar of Texas Commission for Lawyer Discipline for use in sanctioning of Texas attorneys.

15.13 Restrictions on Imposition of Certain Sanctions¹:

- A. Public reprimands shall not be utilized if:
- (1) A public reprimand has been imposed upon the Respondent within the preceding five (5) year period for a violation of the same disciplinary rule; or
 - (2) The Respondent has previously received two (2) or more public reprimands whether or not for violations of the same disciplinary rule within the preceding five (5) year period.
- B. Fully probated suspensions shall not be utilized if:
- (1) A public reprimand or fully probated suspension has been imposed upon the Respondent within the preceding five (5) year period for a violation of the same disciplinary rule; or
 - (2) The Respondent has previously received two (2) or more fully probated suspensions whether or not for violations of the same disciplinary rule within the preceding five (5) year period;
 - (3) The Respondent has previously received two (2) or more sanctions of public reprimand or greater imposed for conflict of interest, theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee.
- C. In the event that a fully probated suspension is not available under this rule, any sanction imposed shall be for no less than thirty (30) days of active suspension.

¹Texas Rules of Disciplinary Procedure

5.1 Limitations on the Use of Private Reprimands²

Limitations on the Use of Private Reprimands: In accordance with Section 81.072(11), Texas Government Code, the Commission adopts the following rules restricting the use of private reprimands by district grievance committees. Private reprimands shall not be utilized if:

- A. A private reprimand has been imposed upon the Respondent within the preceding five (5) year period for a violation of the same disciplinary rule; or
- B. The Respondent has previously received two (2) or more private reprimands, whether or not for violations of the same disciplinary rule, within the preceding ten (10) years; or
- C. The misconduct includes theft, misapplication of fiduciary property, or the failure to return, after demand, a clearly unearned fee; or
- D. The misconduct has resulted in substantial injury to the client, the public, the legal system or the profession; or
- E. There is likelihood of future misconduct by Respondent; or
- F. The Respondent's misconduct was an intentional violation of the Texas Disciplinary Rules of Professional Conduct or, if applicable, the Texas Code of Professional Conduct; or
- G. A Disciplinary Action has been initiated as a result of such misconduct.

²In accordance with Texas Government Code, § 81.072(11), the Commission for Lawyer Discipline, through its Internal Operating Rules (rule 5.1) adopted these limitations on the use of private reprimands pursuant to the Texas Rules of Disciplinary Procedure, § 4.05(H).