

## Joe Longley

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**From:** Jim McCormack <jim@tcmlawfirm.com>  
**Sent:** Monday, August 14, 2017 2:03 PM  
**To:** Joe Longley  
**Cc:** jim@tcmlawfirm.com  
**Subject:** Jim McCormack: State Bar General Counsel issue

Joe,

Hope you are well. I'm told that you are interested in comments on a proposal for the State Bar of Texas Board of Directors to appoint a General Counsel for the Bar, instead of the current arrangement of "legal counsel" who works for the Executive Director.

As you know, I served as General Counsel and Chief Disciplinary Counsel of the State Bar from 1991-1996. The General Counsel essentially serves as the corporate counsel for the public corporation that is the State Bar while the Chief Disciplinary Counsel serves as the chief prosecutor and administrator of the attorney disciplinary system for the Commission for Lawyer Discipline.

Both the Executive Director and the General Counsel are statutory officers—i.e., the positions are created by the State Bar Act and, as such, are mandatory positions. This statutory scheme intended for the General Counsel and the Executive Director to be the two chief appointed officers within the ranks of the State Bar's staff with direct reports to the elected officers and the State Bar Board of Directors. It was and is important that the elected officers and directors of the State Bar have direct access to the Bar's appointed legal counsel and not have legal questions and advice filtered solely through the Executive Director—and subject to the preferences and prerogatives of the Executive Director versus the overall interest of the organization.

Further, a separate General Counsel provides an additional oversight source—at least within the legal realm of the State Bar—where the General Counsel does not have to worry constantly that providing appropriate legal advice and disclosures to the Bar's elected officers and directors could compromise his or her position if that advice is contrary to what the Executive Director wants the officers and directors to hear. Human nature being what it is, the Legislature was wise to create some division of powers between the appointed statutory officers of the Bar, instead of creating a system where the Board receives its legal advice from an employee of the Executive Director who must always be first concerned about pleasing the Executive Director.

While attorneys representing an organization generally have ethical obligations solely to the organization under Rule 1.12, Texas Disciplinary Rules of Professional Conduct, it is not uncommon to see instances where an attorney becomes more beholden to the executive who hired the lawyer (and has the ability to fire the lawyer) than to the organization's top leadership and the organization's best interest. This legal independence can certainly create some tension between the Executive Director and the General Counsel, but that tension is both natural and necessary if the Bar's elected leadership is to receive unvarnished legal advice and counsel. Ultimately, the tension is harmonized by the elected officers and directors who will benefit from a wider range of information and opinions than they receive under the current arrangement.

Jim McCormack

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