

STATE BAR OF TEXAS

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TO: John Sirman, Interim Executive Director

FROM: Don Jones, Acting Legal Counsel

DATE: November 14, 2017

SUBJECT: Legal Counsel Background Information

Prior to 1991, the State Bar Act vested the disciplinary system administration in the “General Counsel.” The primary reason behind requiring the Board to elect the General Counsel was to help ensure the separation of the disciplinary functions of the Bar (General Counsel) and the administrative functions of the Bar (Executive Director). In 1991, the State Bar Act was amended to create the Commission for Lawyer Discipline to oversee the disciplinary system. The amendment also gave the CFLD the authority to select a Chief Disciplinary Counsel “with the advice and consent of the board.” In response to these amendments, the Court amended the Disciplinary Rules of Procedure to provide that the General Counsel of the Bar would serve as the CDC unless and until the CFLD chooses to select a separate CDC. While the GC and CDC were one and the same, the GC would, in consultation with the Executive Director, designate a “corporate counsel” to serve as what we now call our in-house legal counsel.

In 1999, the CFLD opted for a separate CDC and between 1999 and 2010, three persons served consecutively as State Bar General Counsel. Without disciplinary duties, the General Counsel’s role became more of a routine in-house legal counsel dealing with contract review, open records responses, employment issues, etc.

In 2010, the Board considered whether to allow the Executive Director, in consultation with the Officers, to hire an in-house counsel. After much discussion, the Board voted in favor of that scenario. Part of the discussion was whether to seek an amendment to the State Bar Act to comport with this approach. It was finally determined not to seek such an amendment, maintaining the Board’s option to elect a General Counsel in the future if it so chooses.