

# STATE BAR RULES

*Updated through March 31, 2007*

## **Preamble**

These Rules are adopted in aid of the Court's inherent power to regulate the practice of law and nothing shall be construed as a modification or limitation thereof.

## **Article I—Definitions**

The following words shall have the meaning set out below, unless a different meaning is apparent from the context:

1. "State Bar" means the State Bar of Texas.
2. "Clerk" means the clerk of the Supreme Court of Texas.
3. "Board" means the State Bar board of directors.
4. "Act" means the State Bar Act, Chapter 510, Acts of the 66<sup>th</sup> Legislature of Texas, Regular Session, 1979, being also Senate Bill No. 287 as passed by the 66th Legislature of Texas, Regular Session, 1979, and signed by the governor on June 11, 1979, currently codified at Title 2, Subtitle G, Chapter 81 of the Texas Government and as it may be amended.
- 5 "Metropolitan County" includes any of the counties of Bexar, Dallas, Harris, Tarrant and Travis of the State of Texas, as well as any other county hereafter so designated by the board.
6. "Member in Good Standing" is a member of the State Bar who is not in default in payment of dues and who is not under suspension from practice.
- 7 "Registered Address" is the address of a member as shown on the membership rolls maintained by the clerk of the Supreme Court.
8. "Good Cause" for failure to attend a meeting exists if such failure was for a good reason or if there is justification or excuse for such failure.
9. "Court" is the Supreme Court of Texas.
- 10 "Properly Addressed" when used in reference to any mailing to a member of the State Bar, means addressed to the member at the last known address of such member as shown on the rolls of the State Bar at the time of such mailing.
11. "He" includes "she." The masculine gender includes the feminine gender.
12. "Ex Officio" means by virtue or because of an office. Unless otherwise provided, one serving as an ex officio member of a body shall be entitled to vote.

13. “Rules” means the State Bar Rules.

14 “Member” means a member of the State Bar of Texas.

## **Article II—General Provisions**

### **Section 1. Official Name**

The official name of the State Bar is “State Bar of Texas.”

### **Section 2. Purposes of the Organization**

The purposes of the State Bar are those as set out in the Act.

### **Section 3. Purposes of These Rules**

These Rules are adopted for the operation, maintenance and conduct of the State Bar and for the disciplining of its members.

### **Section 4. Seal**

The State Bar shall have a seal in the form of a five-pointed star, around the upper portion of which shall be written in capital letters, “STATE BAR OF TEXAS” and around the lower portion of which shall be written in capital letters, “CREATED IN 1939.” The seal may be used only for official business of the State Bar, its sections and committees.

### **Section 5. Principal Office of the State Bar**

The principal office of the State Bar shall be maintained in Austin, Travis County, Texas.

### **Section 6. Service of Process**

Service of citation or other process may be had upon the State Bar by serving either the executive director or the general counsel.

### **Section 7. Fiscal Year**

The fiscal year of the State Bar shall be as determined by the board.

### **Section 8. Organizational Year**

The organizational year of the State Bar shall be from time of adjournment of the annual meeting of the State Bar one year to the time of adjournment of the annual meeting of the State Bar of the next year.

### **Section 9. Oath of Office**

Officers and directors of the State Bar, before entering upon the duties of office, shall take the official oath or affirmation set out in Art. 16, Sec. I of the Constitution of the State of Texas.

### **Section 10. Elections and Balloting**

Except as may otherwise be provided, elections shall be conducted under the supervision of the executive director.

**Section 11. Officers and Directors Holding Over**

Each officer and director shall continue to serve and perform the duties of his office until his successor has qualified.

**Section 12. Publication of New Rules and Amendments to Rules**

These Rules and any amendments thereto shall be published in a manner directed by the board.

**Section 13. Spokesman for the Bar**

The president of the State Bar or, in the absence of the president, the president-elect, shall be the public representative of the State Bar and shall enunciate the policies of the State Bar as promulgated by the board, except that the board or the president may delegate such authority under such conditions as the board may prescribe. The board may authorize sections and committees, and those properly authorized by such sections and committees, to publicly represent the views of a section or committee.

**Section 14. Procedures for Meetings**

(A) All proceedings at meetings of the State Bar, of the board, of the executive committee and of all other committees and sections shall be governed by the most recent edition of Robert's Rules of Order Newly Revised. (*Amended March 31, 2007*)

(B) Voting by those entitled to vote at all such meetings shall be in person. Voting by proxy shall not be allowed.

(C) The presence of a majority of those persons entitled to vote at all such meetings shall constitute a quorum, except that:

(1) At any meeting of the State Bar, one hundred (100) members shall constitute a quorum for the transaction of business; and

(2) At any meeting of a State Bar section or committee, a quorum may be less than a majority if the board has determined. Action shall be taken only upon a majority vote of those entitled to vote, a quorum being present.

**Article III—Membership**

**Section 1. Members**

The members of the State Bar are those persons designated in the Act.

**Section 2. Enrollment in the State Bar**

(A) Each person who becomes licensed to practice law in Texas shall, no earlier than ten (10) days prior to and no later than ten (10) days following the date of admission, file with the clerk an enrollment form stating name, permanent place of residence, principal place of practice and such other information as may be required by the clerk and pay all fees and assessments then required, and this filing and payment shall constitute enrollment in the State Bar.

(B) Associate members, as authorized by the Act, may be enrolled under rules prescribed by the Court.

**Section 3. Membership Fees**

All membership fees shall be payable at the time of enrollment as a member of the State Bar and annually thereafter on the first day of the State Bar's fiscal year.

**Section 4. Membership Rolls and Membership Cards**

Upon enrollment, the clerk shall enter that person's name on the membership rolls and issue an appropriate membership card which shall be evidence of membership.

**Section 5. Default in Payment of Fees or Assessments**

If a member is in default of payment of membership fees or any assessment levied by the Court on the thirtieth day after the due date, the clerk shall forthwith notify the member of default. If the fees and assessments are not paid on or before sixty (60) days after the mailing of the notice of default, the defaulting member shall automatically be suspended from the practice of law. Any practice of law during such suspension shall constitute professional misconduct and subject the member to discipline.

**Section 6. Resignation from Membership Other Than in Face of Pending Disciplinary Action**

The Court may accept a member's voluntary resignation provided that the tender is in writing, addressed to the Court and is accompanied by:

(A) The member's affidavit that his purpose in resigning is not to avoid disciplinary action and that he has no knowledge of any unresolved allegation of professional misconduct against him.

(B) A certificate by the general counsel that there are no disciplinary actions pending against such member and that such member is not at such time the subject of an investigation for professional misconduct.

**Section 7. Return to Former Status**

(A) When a member, who has been suspended for nonpayment of fees or assessments, removes such default by payment of fees or assessments then owing, plus an additional amount equivalent to one-half the delinquency, the suspension shall automatically be lifted and the member restored to former status. Return to former status shall be retroactive to inception of suspension, but shall not affect any proceeding for discipline of the member for professional misconduct.

(B) A person who has voluntarily resigned from membership shall be required to apply to the Board of Law Examiners and to comply with the rules of the Court pertaining to admission to the practice of law before resuming the practice of law.

(C) An inactive member may return to active status upon written application to the clerk and payment of fees for the current year.

**Section 8. Administration of Attorney Occupation Tax**

An occupation tax of \$200.00 per year is imposed on each attorney pursuant to [§ 191.142 of] [FN1] the Texas Tax Code.

(A) Every member of the State Bar of Texas is subject to the tax except those members who are:

- (1) 70 years of age or older;
- (2) on inactive status under the State Bar Act;
- (3) out of state attorneys who are not practicing law in Texas;
- (4) judges;
- (5) federal or state government employees;
- (6) attorneys employed by city, county, and District attorneys' who do not have a private practice that accounts for more than 50% of their time;
- (7) employees of an Internal Revenue Code § 501(c)(3) or § 501(c)(6) non-profit corporation that is prohibited from private practice; or
- (8) associate members under the State Bar Act;

(B) Except as provided by Subsection (c), each attorney shall pay the tax for each tax year on or before June 1 of the tax year.

(C) If a person is licensed to practice law after the beginning of the tax year or resumes active status to practice law after the beginning of the tax year, the person being licensed or resuming active status shall pay the tax imposed by this section in proportion to the number of months for which the person will be licensed during that tax year. If a person is licensed after the beginning of a calendar month, the month in which the person is licensed shall count as a month for purposes of payment of taxes under this subsection.

(D) A penalty of 5 percent of the tax due shall be imposed on a person who fails to pay the tax imposed by this section when due, and, if the person fails to pay the tax within 30 days after the day on which the tax or report is due, an additional 5 percent shall be imposed.

(E) The yearly interest rate on delinquent tax imposed by this section is 12 percent. Delinquent taxes draw interest beginning 60 days from the due date.

(F) The State Bar shall suspend from the practice of law a member who does not pay, within 90 days after the date it is due, the tax imposed or a penalty relating to that tax.

(G) An attorney who is suspended under Subsection (f) shall be reinstated on payment of the tax and any interest and penalties.

## **Article IV—Administration**

### **Section 1. Board of Directors; Duties**

(A) The State Bar shall be governed by a board which shall enforce the act and these rules.

(B) The term of office for each elected, public, and minority director shall be three years. The terms of elected and public directors shall be staggered with one-third of such directors elected or appointed each year. The terms of minority directors shall be staggered with as near to one-third as possible appointed each year.

(C) The regular term of office of an elected, public, or minority director shall commence on adjournment of the annual meeting of the State Bar next following election or appointment and continue until the adjournment of the third annual meeting next following election or appointment.

(D) The board shall take such action and adopt such regulations and policies, consistent with the Act or these Rules, as shall be necessary and proper for the administration and management of the affairs of the State Bar, for the protection of the property of the State Bar and for the preservation of good order.

### **Section 2. Meetings of the Board**

The board shall meet regularly at least four (4) times annually, and may meet specially, at such times and places as the board shall determine. All meetings, however, shall be held within the State of Texas.

### **Section 3. Composition of Board**

The board shall be composed of the officers of the State Bar, the president, president-elect, and immediate past president of the Texas Young Lawyers Association, not more than thirty members of the State Bar elected by the membership from their district as may be determined by the board, six persons who are not licensed attorneys, known as public directors, who do not have, other than as consumers, a financial interest in the practice of law, and four minority directors appointed by the president and confirmed by the board. The board may, in its discretion, also include other members who shall be nonvoting board members.

### **Section 4. Chairperson of Board**

The board shall elect annually from its membership, under such procedures as it shall prescribe, a chairperson to serve for the next succeeding organizational year. Such person shall be elected from the class of directors then serving the second year of their terms.

### **Section 5. Qualification of Officers and Directors**

(A) No person may serve as an officer or director who,

(1) has not taken the official oath by the second regular board meeting next following the commencement of the term for which he was elected or appointed,

(2) as to an elected or ex officio director or an officer, is not an active member in good standing,

(3) as to an elected or ex officio director or an officer, has ever been suspended or disbarred from the practice of law,

(4) as to an elected director, does not maintain in the district from which elected, his principal place of practice,

(5) as to an elected director, has his principal place of practice in the same county as the last preceding director from that district, except for an elected director in a metropolitan county or in El Paso County, and except as necessary to achieve a rebalancing of the sizes of the Board classes in accordance with the provisions of Art. IV, §8(C).

(6) as to an elected director, has previously served at least one and a half (1 1/2) years of the immediately preceding director's term,

(7) is, or becomes, incapacitated from performing the duties of such office for all or a substantial portion of such term,

(8) as to a director, is absent from more than half of the regularly scheduled board meetings that the director is eligible to attend during a calendar year without an excuse approved by a majority vote of the board,

(9) as to a public director, has failed confirmation by the senate of the State of Texas,

(10) is an elected official paid by the State of Texas, except that such prohibition shall not apply to public directors, or

(11) as to a director or a director's spouse, is an officer, employee, or paid consultant of a Texas trade association in the field of board interest as defined in State Bar Act §81.028.

(B) The board shall be the judge of the qualifications of officers and directors

(C) The board shall provide a training program for board members that meets the requirements of §81.0201 of the State Bar Act. No person who is elected or appointed to and qualifies for office as a member of the board of directors may vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with the requirements of §81.0201 of the State Bar Act.

## **Section 6. How Directors Shall Be Elected**

Elected directors shall be elected by a majority of the active and emeritus members of the State Bar voting who have their principal place of practice in the same Bar district as that of the candidate. If no candidate receives a majority, a run off shall be held at such time as the board shall prescribe between the two candidates receiving the greatest number of votes.

## **Section 7. Nominees for Office of Elected Director**

(A) An active member's name may be placed in nomination for the office of elected director by a written petition in form prescribed by the board and signed by the lesser of five percent (5%) of the active members whose principal place of practice is within the district to be represented by the nominee if elected, or one hundred (100) of such members, which petition must be received in the office of the executive director on or before March 1 of the year of election. The executive director shall promptly review the petition to verify the eligibility of the nominee. If from the petition it appears the nominee is eligible, that person's name shall be listed upon the ballot. If from the petition the executive director finds the nominee to be ineligible, that fact shall immediately be communicated to the nominee. Any nominee desiring to appeal the findings of the executive director shall forthwith notify the executive director, who shall forthwith convene the executive committee to hear and determine the matter. The executive committee shall have final authority to determine questions of eligibility of the nominee and the validity of the nominating petition and shall do so within ten (10) days of the notice to the executive director.

(B) The petitions may be in counterparts, and it shall be sufficient that the signatures on all the counterparts aggregate the required number of signatures.

(C) If no valid petition nominating an eligible person shall have been received by the executive director by March 1 in respect to a district in the year in which such district is to elect a director, or if all persons who have been nominated in the foregoing manner shall have died or become disqualified from serving at any time prior to the printing of the ballot in such election, then the president of the State Bar with the advice of the person then serving as elected director from that district shall name a qualified person to stand for election as director from that district.

(D) If an elected director fails to qualify, such position shall be deemed vacant.

## **Section 8. Director Vacancies and How Filled**

(A) Death of a board member, judgment of incompetency, a board member's resignation or any failure to qualify shall create a vacancy. In case of a vacancy as to an elected director, the president, shall appoint a member whose principal place of practice is within the district within which the vacancy has occurred. Vacancies in ex officio directorships shall be filled by the person who succeeds to the office in the State Bar or in the Texas Young Lawyers Association to which such directorship is incident, except that the directorship incident to the office of immediate past president of the State Bar or Texas Young Lawyers Association or immediate past chairperson of the board of the State Bar

shall be filled by the most recent holder of such offices respectively who is willing to serve. Vacancies in public and minority directorships shall be filled in the same manner and by the same authority designated by statute to fill such positions.

(B) Persons filling such vacancies shall meet the same requirements and shall qualify in the same manner as those assuming the office of director for the full term.

(C) The board may adopt appropriate procedures for the purpose of equalizing the size of the classes of the board of directors. Once such equalization is accomplished, then those appointed to fill a vacancy shall serve the balance of the term of the particular position vacated.

(D) The board of directors may remove a director from the board at any regular meeting by resolution declaring the director's position vacant, pursuant to §81.027(a) of the State Bar Act or Article IV, §5 of these Rules.

### **Section 9. Executive Committee**

(A) The executive committee of the board shall consist of the president, president-elect, the chair of the board, the immediate past president of the State Bar, president of the Texas Young Lawyers Association and such other persons as the president may appoint. The president shall be chair, and the board chair shall be the vice-chair of the executive committee and shall preside in the chairperson's absence.

(B) The general purpose of the executive committee shall be to perform between meetings of the board such functions, consistent with the Act or these Rules, as the board may assign to it from time to time.

(C) The general counsel and the executive director of the State Bar shall be ex officio, non-voting members of the executive committee.

### **Section 10. Officers**

(A) The officers of the State Bar shall be the president, the president-elect and the immediate past president.

(B) The president shall preside at all meetings of the State Bar, be the official representative and spokesperson for the State Bar in all public matters and have general responsibility for carrying out the policy of the State Bar.

(C) The president-elect shall preside at meetings of the State Bar in the absence of the president and otherwise assist the president, as the president shall request, in carrying out the responsibilities of the office of president.

### **Section 11. President-Elect, Nominations and Elections**

(A) At its regular meeting next following the first day of each calendar year, the board of directors shall nominate two (2) or more members of the State Bar of Texas to stand for

election to the office of president-elect for the ensuing bar year. Such nomination shall be by majority vote of the board.

(B) Any other member of the State Bar of Texas shall also be privileged to stand for election to the office of president-elect when a written petition in form prescribed by the board of directors, signed by no fewer than five percent (5%) of the active members of the State Bar of Texas in good standing, is filed with the executive director on or before March 1 next preceding the election to be held for the office of president-elect for the ensuing year.

(C) The names of all nominees for the office of president-elect shall be published in the Texas Bar Journal and otherwise publicized by such other practical means as the board shall determine.

(D) In making nominations to the office of president-elect, both the board of directors and those persons who may be nominated by petition pursuant to Section 11(B) herein, shall be bound by the following geographical rotation:

(1) nominees from metropolitan counties in the first year of rotation;

(2) nominees from other than metropolitan counties in the second year of rotation;

(3) nominees from any county during the third year of rotation. Any person nominated by either the board or by petition who does not meet the requirements of this rotation shall be ineligible to stand for election in the year nominated. For purposes of this rule, the first year of rotation shall be the election for president-elect for 1988.

(E) The ballot shall be distributed to each member of the State Bar of Texas entitled to vote at the same time as ballots for the election of elected directors are distributed. A combined ballot for the office of president-elect and for the office of director may be used in those bar districts in which an election for director is to be conducted.

(F) If no candidate for president-elect receives a majority of the votes, a run-off election shall be held at such time as the board shall prescribe between the two candidates receiving the greatest number of votes. The person receiving a majority of the votes in either the general election or the run-off election shall be declared to be elected to the office of president-elect.

(G) The office of president shall be filled by the succession of the president-elect to such office at the expiration of the term for which such person was elected to serve as president-elect.

### **Section 12. Term of Office of Officers**

The regular term of office for officers of the State Bar shall be from adjournment of the annual meeting for the year preceding the year of service and shall end with such adjournment the following year.

### **Section 13. Vacancy in an Office**

A) Death of an officer, judgment of incompetency, an officer's resignation or failure to qualify shall create a vacancy in the office.

(B) If a vacancy occurs in the office of president, it shall be filled by the succession of the president-elect to the office of president, in which case a special election shall be called by the board to fill the office of president-elect at such times and under such procedures as are prescribed by the board.

(C) If the vacancy occurs in the office of president-elect, a special election shall be held for the office of president-elect. In such event the procedures for a regular election shall be followed subject to such necessary changes as shall be required in order to meet the exigencies of the situation.

(D) Should the president-elect succeed to the office of president and have less than six (6) months to serve in the unexpired term, he shall in such event, serve the next full term to which he would have normally succeeded.

(E) In the event a simultaneous vacancy exists in the office of the president and president-elect, a special election shall be held for each office and in the meanwhile the chairperson of the board shall serve as interim president.

### **Section 14. Other Executive Positions**

The executive director and general counsel shall be elected by the board and shall perform such duties as the board may prescribe.

## **Article V—Fiscal**

### **Section 1. Budget Committee**

There shall be a budget committee, comprised of the president of the State Bar, the president-elect, the chairperson of the board, and two (2) or more members of the board of directors appointed by the president. The president or his designee shall be chairperson of this committee.

### **Section 2. Public Hearing on Budget**

A public hearing shall be held each year to consider the State Bar's proposed budget in accordance with the Act.

### **Section 3. Annual Budget**

(A) The budget committee shall consult with the executive director and the general counsel with respect to the annual budget for the State Bar for the fiscal year next after

the committee's appointment. The proposed budget shall be prepared and submitted to the board at its first quarterly meeting each calendar year, and shall be acted on by the board at such meeting. After adoption by the board, the budget shall be submitted to the Court for approval.

(B) The budget may be amended by majority vote of the board at any regular or special meeting in order to meet any unforeseen contingency, subject to the Court's approval.

#### **Section 4. Expenses**

The board may provide for the payment of necessary expenses incurred by the officers, directors, committee members, and employees of the State Bar in the discharge of their duties.

### **Article VI—Adopting and Amending the State Bar Rules**

New rules for the governance of the State Bar, and amendments to these Rules shall be adopted and promulgated by the Court as provided in the Act.

### **Article VII—Meetings of the State Bar of Texas**

#### **Section 1. Annual Meeting**

The annual meeting of the State Bar shall be held during the month of June or July of each year at a time and place to be determined by the board.

#### **Section 2. Special Meetings**

(A) Special meetings of the State Bar shall be called by the president upon two-thirds (2/3) vote of the directors, or upon written petition of at least five hundred (500) members of the State Bar.

(B) The time and place of such meeting shall be in accordance with the call.

(C) Prior to any special meeting, the executive director shall mail to each member in good standing a notice of the time and place of the meeting and purposes for which the meeting is to be held. The notices shall be mailed sufficiently in advance of such meeting date so as to afford reasonable notice of the meeting.

#### **Section 3. Procedure as to Proposed Resolutions**

The board shall adopt a procedure by which resolutions may be proposed for adoption by the State Bar and for their review as to form in advance of presentation to the general assembly at the annual meeting. A brief resume of this procedure shall be published in the Texas Bar Journal prior to the annual meeting.

## **Article VIII—Committees, Sections and Divisions**

### **Section 1. Creation, Membership, Officers; Vacancies**

(A) The board may create or dissolve from time to time such State Bar and board committees, sections and divisions as it may deem advisable. Their organizational structure, purpose and bylaws shall be subject to approval of the board. Membership of committees shall be comprised of presidential appointees. Membership of sections shall be comprised of members of the State Bar who pay the section dues and are otherwise qualified under the bylaws of the section. Membership of divisions shall be determined by their respective bylaws.

(B) As soon as practicable after assuming office, and not later than the April board meeting of the calendar year in which he will assume the presidency, the president-elect shall prepare and present to the board for its advice and consent, a proposed roster of State Bar committees, committee chairpersons and committee members for his presidential year. The board, at the April meeting shall approve the list of State Bar committees and the president-elect shall promptly notify the proposed chairpersons and members of their selection and obtain their consent to serve. Any necessary changes or additions in committee organization and personnel shall be reported by the president-elect to the retiring board at its June meeting and shall be finally approved by the incoming board at its first meeting of the new organizational year. Subsequent creation of special committees by the president and the appointment of the personnel thereof, shall be subject to approval by the executive committee or by the board at the earliest opportunity.

(C) Officers of sections and divisions for the ensuing year shall be elected according to the respective bylaws at their annual meeting coinciding with the annual meeting of the Bar.

(D) Vacancies occurring in membership of State Bar committees shall be filled by the president for the unexpired term and vacancies occurring in section committees shall be filled by the chairperson of the section, except that if a vacancy occurs in the position of chairperson and there is no vice-chairperson to assume the position of chairperson, it shall be filled by a majority vote of the section council. Vacancies in division committees shall be filled in accordance with the bylaws of the division.

### **Section 2. Reports**

The sections and divisions and State Bar committees shall deliver to the president and executive director at least sixty (60) days before the annual meeting of the State Bar, annual reports and recommendations. Such reports and recommendations may be printed and sent to members of the State Bar before the annual meeting, but any section, division or committee may present at the annual meeting any additional report or recommendation. The president, president-elect, immediate past president and the board may also present reports and recommendations in the same manner

## **Article IX—Texas Bar Journal**

A publication, under the name Texas Bar Journal, and devoted to legal matters and the affairs of the State Bar and its members may be published and circulated under the direction of the board.

## **Article X—Discipline and Suspension of Members**

By referendum of the membership in 1990 and Order of the Supreme Court of Texas dated February 26, 1991, Texas Rules of Disciplinary Procedure were adopted amending Article X, Sections 1 through 8 and Sections 10 through 38 of the State Bar Rules.

By referendum of the membership in 2004 and by Order of the Supreme Court dated January 28, 2005, the Texas Rules of Professional Conduct Rule 1.04 was amended to be effective March 1, 2005, and then by order dated February 7, 2005, Part VII of the Rules were amended to be effective June 1, 2005.

By referendum of the membership in 1989 and Order of the Supreme Court of Texas dated June 20, 1989, the Texas Rules of Professional Conduct were adopted amending Article X, Section 9 of the State Bar Rules.

[See Appendix 1 for Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure, revised April 1993.]

## **Article XI—Interest Earned on Client Funds Held by Attorneys**

### **Section 1. Short Title**

This Article may be referred to as the Texas Equal Access to Justice Program.

### **Section 2. Findings; Purpose**

The Supreme Court of Texas finds that:

- (A) On certain client funds held by attorneys, interest income cannot reasonably be earned to benefit individual clients for whom the funds are held;
- (B) Income can be earned on those client funds pursuant to the program provided for in this Article and that income should be used to provide additional legal services to the indigent in civil matters;
- (C) This Court is the proper and appropriate body, through the adoption of rules as set forth in this Article, to create and administer, or cause to be created and administered, a program to carry out the purposes of this Article; and
- (D) This Article is adopted in furtherance of the inherent powers of this Court to regulate the practice of law in the State of Texas.

### **Section 3. Rules**

This Court shall hereafter promulgate rules, consistent with the provisions of this Article, that are necessary and appropriate to carry out the purposes of this Article and conform the program created as provided by this Article to applicable statutes, regulations, and rulings. The rules, which may be amended or revoked by this Court from time to time as it deems necessary to carry out this Article, shall provide for:

(A) The formation of a corporation, incorporated without members under the Texas Non-Profit Corporation Act (TEX.REV.CIV.STAT. ANN. art. 1396-1.01 et seq.), to be the recipient of and disbursing agent for interest earned on client funds as provided by this Article;

(B) The operation of the nonprofit corporation and the program created as provided by this Article, including the provisions to be contained in the articles of incorporation and bylaws of the corporation;

(C) The designation of persons to serve as directors of the corporation and their terms of office;

(D) Definitions of the client funds subject to Section 5 of this Article;

(E) Exemptions from Section 5 of this Article when deemed by the Court to be appropriate;

(F) Provisions specifying the types of financial institutions eligible for the deposit of the funds, the types of organizations and programs eligible to receive funds from the nonprofit corporation, and the persons and types of matters and cases eligible to receive legal services funded by grants from the nonprofit corporation; and

(G) Provisions relating to recordkeeping, reporting, and audits of the nonprofit corporation and the organizations and programs receiving funds from the nonprofit corporation.

### **Section 4. Provisions Relating to the Nonprofit Corporation**

(A) The nonprofit corporation provided for in this Article shall be organized in such a manner as to be exempt from federal income taxation under the Internal Revenue Code of 1954 or any subsequent United States internal revenue law.

(B) The exclusive purpose of the nonprofit corporation provided for in this Article shall be to grant funds received by it, as provided in this Article, to organizations that will use the funds exclusively to provide legal services to the indigent in civil matters.

(C) The nonprofit corporation provided for in this Article shall be governed by a board of directors consisting of a chairman and twelve members. The chairman and six directors shall be persons appointed by this Court and the other six directors shall be persons appointed by the president of the State Bar of Texas, with the approval of the board of

directors of the State Bar of Texas. At least two of each group of appointees to the board of directors, other than the chairman, shall not be attorneys, and shall not have, other than as consumers, a financial interest in the practice of law.

(D) Funds granted by the nonprofit corporation provided for in this Article to organizations to provide legal services to the indigent in civil matters may not be used for any case or matter that, if undertaken on behalf of an indigent person by an attorney in private practice, might reasonably be expected to result in payment of a fee for legal services from an award to a client, from public funds, or from the opposing party. This subsection does not apply if it is determined, pursuant to rules adopted by this Court, that adequate legal services would otherwise be unavailable to the indigent person in the case or matter.

(E) Neither the nonprofit corporation provided for in this Article nor any organization or program to which it grants funds may take an action or require an attorney to take an action in violation of the Texas Rules of Professional Conduct (Article X, Section 9, State Bar Rules) or in violation of any other code of professional responsibility adopted by this state for attorneys.

(F) No funds shall be granted by the nonprofit corporation to directly or indirectly fund class action suits, lawsuits against governmental entities, or lobbying for or against any candidate or issue. Provided, however, that funds may be granted to finance suits against governmental entities on behalf of individuals in order to secure entitlement to benefits such as, but not limited to, Social Security, Aid to Families with Dependent Children, and the like.

(G) The nonprofit corporation provided for in this Article shall require, as a condition to the granting of funds to any organization or program, that adequate provision be made, in accordance with rules adopted by this Court, for reports as to the actual use of funds and for audit of the reports. The violation of any prohibition contained in Subsection 4(F) of this Article shall render the offending organization or program ineligible to receive funds from the nonprofit corporation.

(H) The records of the nonprofit corporation provided for in this Article, including applications for funds, whether or not granted, shall be open for public inspection, in accordance with rules this Court may promulgate.

(I) The nonprofit corporation provided for in this Article may expend funds for administrative costs of the program, including any costs incurred after the adoption of this Article, and may provide a reasonable reserve for administrative costs.

### **Section 5. Deposit of Certain Client Funds**

(A) An attorney, law firm, or professional corporation engaged in the practice of law, receiving in the course of the practice of law in this state, client funds that are nominal in amount or are reasonably anticipated to be held for a short period of time, shall establish and maintain a separate interest-bearing demand account at a financial institution and

shall deposit in the account all those client funds. All the client funds may be deposited in a single unsegregated account. The interest earned on the account shall be paid in accordance with and used for the purposes set forth in this Article and the rules adopted by this Court. Funds to be deposited under this Article do not include those funds evidenced by a financial institution instrument, such as a draft, until the instrument is fully credited to the financial institution in which the account is maintained.

(B) This Article does not prohibit an attorney, law firm, or professional corporation engaged in the practice of law from establishing one or more interest-bearing accounts or other investments permitted by the Texas Disciplinary Rules of Professional Conduct (Article X, Section 9, State Bar Rules) with the interest or dividends earned on the accounts or investments payable as directed by clients for whom funds are not deposited in accordance with Subsection (A) of this section.

(C) An attorney, law firm, or professional corporation engaged in the practice of law which maintains accounts provided for in this Section 5 must so advise the nonprofit corporation in writing within thirty (30) days of the establishment of such account or accounts.

## **Section 6. Depositories**

(A) The interest-bearing demand account required by Section 5 of this Article shall be established with any financial institution meeting the requirements set forth in the rules adopted by this Court.

(B) The attorney, law firm, or professional corporation establishing the interest-bearing demand account shall attempt in good faith to obtain a rate of interest payable on the account not less than the rate paid by the depository institution to other depositors with accounts of similar size. A higher rate offered by the institution on deposits meeting certain time requirements or minimum amounts, such as those offered in the form of certificates of deposit, may be obtained if there is no impairment of the right to withdraw or transfer principal immediately, other than the statutory notification requirements generally applicable to those accounts, even though interest may be lost because of the withdrawal or transfer.

(C) The depository institution shall be directed by the attorney, law firm, or professional corporation establishing the account:

(1) To remit, at least quarterly, interest earned on the average daily balance in the account, less reasonable service charges, to the nonprofit corporation provided for in this Article;

(2) To transmit to the nonprofit corporation provided for in this Article with each remittance a statement showing the name of the attorney, law firm, or professional corporation with respect to which the remittance is sent, the rate or rates of interest applied, and the amount of service charges deducted, if any; and

(3) To transmit to the depositing attorney, law firm, or professional corporation at the same time a report is sent to the nonprofit corporation provided for in this Article, a report showing the amount paid to the nonprofit corporation for that period, the rate or rates of interest applied, the amount of service charges deducted, if any, and the average daily account balance for each month of the period for which the report is made.

### **Section 7. Attorney Liability**

Nothing in this Article affects the obligations of attorneys, law firms, or professional corporations engaged in the practice of law with respect to client funds other than client funds reasonably determined to be "nominal in amount" or reasonably anticipated to be held for a "short period of time," as those terms are defined by the rules adopted by this Court. An attorney, law firm, or professional corporation is not liable in determining which funds are nominal in amount or on deposit for a short period of time if the determination is made in good faith in accordance with the rules.

### **Section 8. Liability Of Nonprofit Corporation**

If client funds that are neither nominal in amount nor on deposit for a short period of time are deposited under Section 5(A) of this Article, the liability of the nonprofit corporation provided in this Article may not exceed the amount of interest attributable to client funds actually paid by the depository to the nonprofit corporation.

### **Section 9. Initial Distribution of Funds**

The initial distribution of funds under this Article shall be made at a time when, in the determination of the board of directors of the nonprofit corporation provided for in this Article, there are sufficient funds to provide an adequate distribution.

## **Article XII—Minimum Continuing Legal Education**

### **Section 1. Purpose**

The purpose of minimum continuing legal education requirements is to ensure that every active member of the State Bar of Texas pursues a plan of continuing legal education throughout his or her career in order to remain current on the law in our rapidly changing society.

### **Section 2. Definitions**

(A) "MCLE" means Minimum Continuing Legal Education.

(B) "Committee" means the Committee on Minimum Continuing Legal Education.

(C) "Committee member" is a member of the Committee on Minimum Continuing Legal Education.

(D) "MCLE Department" means the departmental staff of the State Bar of Texas with the responsibility of administering all aspects of the MCLE program as determined by this Article and any regulations established pursuant hereto.

(E) " The Director" means the Director of the MCLE Department of the State Bar of Texas.

(F) "Continuing legal education activity" means any organized legal educational activity accredited by the Committee.

(G) "CLE Credit Hours" means the actual amount of instruction time for an accredited continuing legal education activity expressed in terms of hours rounded to the nearest one-quarter hour. The number of CLE credit hours shall be based on sixty (60) minutes of instruction per hour, unless otherwise specified herein.

(H) "Self-study" includes viewing or listening to audio, video, or digital media, reading written material, or attending organized in-office educational programs, or such other activities as may be approved by the Committee.

(I) "Accredited Sponsor" means any provider who receives presumptive approval of the Committee to conduct continuing legal education activities that satisfy the requirements of this Article.

(J) "Accredited CLE Activity" means any CLE activity that receives MCLE accreditation under the MCLE Rules , Regulations, and accreditation criteria adopted by the MCLE Committee.

(K) "MCLE compliance record" means the official record of a member's CLE credit hours earned during any MCLE compliance year that shall be maintained by the MCLE Department and used to verify a member's compliance with the MCLE requirements. It shall be the responsibility of each member to ensure that his/her MCLE compliance record is accurate and complete.

(L) "MCLE compliance year" means the twelve (12) month period that begins each year on the first day of an attorney's birth month and ends on the last date of the month that immediately precedes the attorney's birth month in the following year.

(M) "MCLE reporting month" means the birth month during which the attorney is required to show completion of CLE requirements. If an extension has been granted in accordance with the Article (Section 9), the reporting month shall mean the month immediately following the last date of the extension and shall replace the birth month for that current compliance year.

(N) "MCLE Annual Verification Report" means the written report containing a listing of all CLE credit hours recorded in a member's MCLE compliance record for an MCLE

compliance year. This report shall be furnished to each member annually by the MCLE department.

(O) "Preferred Address" means the member's physical address, post office box, E-mail address or other address, that is on file with the State Bar of Texas Membership department and that is designated as the member's preferred address for receiving written notifications.

(P) "Secondary Address" means any or all of the member's physical addresses, post office boxes, E-mail addresses, or other addresses on file with the State Bar of Texas Membership department and that are not designated as the member's preferred address for receiving written notifications.

### **Section 3. Committee on Minimum Continuing Legal Education**

(A) There is hereby established the Committee which shall be composed of twelve (12) members. Nine (9) of the members shall be residents of this State who are active members of the State Bar, at least two (2) of whom shall be under the age of thirty-six (36) years as of June 1 of the year appointed. Of the nine (9) attorney members not more than two (2) shall be judges. The remaining three (3) members of the Committee shall be residents of this State who are not attorneys. The President-Elect, with the approval of the Board, shall appoint any Committee members whose terms will begin at the beginning of the bar year during which he or she will be President. Should a vacancy on the Committee occur during the bar year, the President, with the approval of the Board, shall appoint a successor to fill the unexpired term. Each member of the Committee shall continue to serve until his or her successor is appointed and qualified. The President-Elect shall designate one (1) of the attorney members of the Committee to serve as chairperson during his or her term as President. The Board may remove a member of the Committee for good cause. No Committee member shall be appointed for more than two (2) terms. Committee members shall serve without compensation, but shall be reimbursed for reasonable and necessary expenses incurred in the performance of their official duties.

(B) The State Bar shall employ such staff as may be necessary to perform the record keeping, auditing, reporting, accreditation, and other functions required by these rules.

(C) The Committee, subject to these rules and such regulations as it may propose and may be adopted by the Board, shall administer the program of minimum continuing legal education established by this Article. It may propose regulations and prepare forms not inconsistent with this Article pertaining to its function and modify or amend the same from time to time. All such regulations, forms, modifications or amendments shall be submitted to the Board for approval, and upon such approval, shall be published in the Texas Bar Journal.

### **Section 4. Accreditation**

(A) The Committee shall develop criteria for the accreditation of continuing legal education activities and shall designate the number of hours to be earned by participation in such activities as approved by the Committee. In order for an activity to be accredited,

the subject matter must directly relate to legal subjects and the legal profession, including professional responsibility, legal ethics, or law practice management. The Committee may, in appropriate cases, extend accreditation to qualified activities that have already occurred. The Committee shall not extend credit to activities completed in the ordinary course of the practice of law, in the performance of regular employment, as a volunteer service to clients or the general public, as a volunteer service to government entities, or in a member's regular duties on a committee, section, or division or any bar-related organization. The Committee may extend accredited status, subject to periodic review, to a qualified sponsor for its overall continuing legal education curriculum. No examinations shall be required.

(B) Self-study credit may be given for individual viewing or listening to audio, video, or digital media, reading written material, attending organized in-office educational programs or such other activities as may be approved by the Committee. No more than five (5) hours of credit may be given during any compliance year for self-study activities. Time spent viewing or listening to audio, video or digital media as an organized CLE activity approved by the Committee counts as conventional continuing legal education and is not subject to the self-study limitation.

(C) Credit may be earned through teaching or participating in an accredited CLE activity. Credit shall be granted for preparation time and presentation time, including preparation credit for repeated presentations.

(D) Credit may be earned through legal research-based writing upon application to the Committee provided the activity (1) produced material published or to be published in the form of an article, chapter, or book written, in whole or in part, by the applicant; (2) contributed substantially to the continuing legal education of the applicant and other attorneys; and (3) is not done in the ordinary course of the practice of law, the performance of regular employment, or as service to clients.

(E) The Committee may, in appropriate cases, charge a reasonable fee to the sponsor for accrediting CLE activities.

(F) A member who holds a full-time faculty position in any law school which is approved by the American Bar Association may be credited as fulfilling the requirements of this Article except as to the minimum requirements for CLE in legal ethics and professional responsibility. A member who holds a part-time faculty position in any such law school may claim participatory credit for the actual hours of class instruction time not to exceed twelve (12) hours per compliance year, except as to the minimum requirements for CLE in legal ethics and professional responsibility.

(G) The Committee shall grant exemption from this Article to any emeritus member of the State Bar of Texas. (Emeritus as defined by the State Bar Act, Section 81.052(e)).

(H) Credit to meet the minimum educational requirement shall be extended to attorneys who are members of the Senate and House of Representatives of present and future

United States and Texas Legislatures for each regular session in which the attorney member shall serve.

(I) No credit shall be given for activities directed primarily to persons preparing for admission to practice law.

(J) Credit, not to exceed thirty 30 hours in any compliance year, may be earned for attending law school class after admission to practice in Texas provided (1) that the member officially registered for the class with the law school; and (2) that the member completed the course as required by the terms of registration. Credit for approved attendance at law school classes shall be for the actual number of hours of class instruction time the member is in attendance at the law school course.

### **Section 5. Reporting Period**

(A) Each member's compliance year shall begin on the first day of the month in which his or her birthday occurs.

(B) The initial compliance year for each member shall be the 24-month period that begins on the first birth month following the date of admission.

### **Section 6. Minimum Educational Requirements**

(A) Every member shall complete fifteen (15) hours of continuing legal education during each compliance year as provided by this article. No more than five (5) credit hours credit may be given for completion of self-study activities during any compliance year.

(B) At least three (3) hours of the fifteen (15) hours shall be devoted to legal ethics/professional responsibility subjects. One (1) of the three (3) legal ethics/professional responsibility hours shall be completed through self-study.

(C) All persons admitted, and any person who has been suspended, disbarred, or who has resigned pursuant to Article X of the State Bar Rules, or who has resigned pursuant to Article III of the State Bar Rules, or who has been suspended pursuant to Section 8 of this Article, or who has taken inactive status pursuant to Section 81.052, Texas Government Code, and who desires to return to active status shall be required, in addition to such other requirements as the State Bar Rules may contain, to comply with the requirements of Sections 6(A) and 6(B) hereof.

(D) Accredited continuing legal education and self-study completed within a 12-month period immediately preceding a member's initial compliance year may be used to meet the educational requirement for the initial compliance year. Exception: Credit for the educational activity entitled "The Guide to the Basics of Law Practice," sponsored by the Texas Center for Legal Ethics and Professionalism, completed anytime during the third year of law school or during the initial compliance year, may be used toward meeting the educational requirements for the initial compliance year.

(E) Accredited continuing legal education and self-study completed during any compliance year in excess of the minimum fifteen (15) hour requirement for such period will be applied to the following compliance year's requirement. This carryover provision applies to one (1) year only.

### **Section 7. Credit Computation**

(A) Credit for attending accredited continuing legal education activities shall be based on net actual instruction time, which may include organized lecture, panel discussion, audio, visual and digital media presentations and organized question-and-answer periods. Sponsors are encouraged to calculate the number of hours of credit that should be given for any activity offered, using the above guide, and indicate the number on the activity brochure. Fractional hours should be stated as decimals.

(B) Credit for viewing or listening to audio, video or digital media shall be based on the running time of the recordings.

(C) Credit for reading approved material or attending in-office educational programs shall be based on actual time spent.

### **Section 8. Compliance**

(A) Two months prior to the end of the MCLE compliance year, the Director shall send an MCLE Annual Verification Report to each member's Preferred Address for who said MCLE compliance year applies. Upon receipt of the MCLE Annual Verification Report, the member shall review the report for accuracy and completeness. If the report accurately reflects the member's MCLE compliance record for the current MCLE compliance year, and if it shows that the minimum CLE Credit hours requirements have been met, the no additional action is required by the member. If the report does not accurately and completely reflect a member's CLE credits, then the member shall correct his or her record according to the instructions on the Report. To avoid fines and/or suspension, all CLE Credit hours, corrections and additions to the MCLE record shall be completed, filed and received by the MCLE Director on or before the end of the compliance year.

(B) On or about the first day of the birth month, the Director shall make available to the member, a report of amendments that have been made to the MCLE record for the compliance year that ended immediately prior to said birth month. The Director shall also notify any member who has not completed MCLE requirements for the compliance year that ended immediately prior to said birth month. A member who has not completed his or her CLE requirements by the first day of the birth month, will receive an automatic grace period through the last day of the birth month to complete and report any remaining CLE credits, Members shall not be fined or penalized for completing and reporting CLE credits by the last day of the birth month (grace period).

(C) On or about the twelfth (12<sup>th</sup>) day of the month immediately following a member's birth month, the Director shall notify all members who are in non-compliance for the MCLE compliance year just ended to advise such member of their non-compliance

status. Such notices shall be in the form of a written notice, and sent to each member at the Preferred Address and via one (1) Secondary Address (if any) that is then on file with the Membership Department of the State Bar.

(D) On or about the first (1<sup>st</sup>) day of the third month immediately following a member's birth month, the Director shall send final notice to any member who has not cured their non-compliance status. Such notice shall be in the form of a written notice, and sent to each member at the Preferred Address via one (1) Secondary Address (if any) that is then on file with the Membership Department of the State Bar.

(E) If by the last business day of the fourth month following the birth month (or reporting month if the member has been granted an extension in accordance with this article for completion of CLE requirements) the member has still not cured his or her non-compliance, the member shall be automatically suspended from the practice of law in Texas as directed by Order of the Supreme Court dated December 23, 2002.

(F) Upon the execution of suspension, the Director shall cause to be sent a written notification to each member who is suspended from practice by the order. Said notification shall be sent to each member at his or her Preferred Address and via one (1) Secondary Address (if any) that is then on file with the Membership Department of the State Bar.

## **Section 9. Review and Appeal**

(A) A member may file a written request for exemption from compliance with any of the requirements of this Article, an extension of time for compliance, an extension of time to comply with a deficiency notice, or an extension of time to file an annual activity report. Such request for excuse or for extension shall be reviewed and determined by the Committee or by such of its members as the chairperson may, from time to time, designate. The member shall be promptly notified of the Committee's decision.

(B) "Good Cause" shall exist when a member is unable to comply with this Article because of illness, medical disability, or other extraordinary hardship or extenuating circumstances that were not willful on the part of the member and were beyond his or her control.

(C) Should the decision of the Committee be adverse to the member, the member may request the Board of Directors of the State Bar to review the decision by making such request in writing to the Executive Director of the State Bar within thirty days of notification of the decision of the Committee. The Chairman of the Board may appoint a committee of the Board to review the decision of the Committee and make a recommendation to the Board. The decision shall be made by the Board.

(D) Should the decision of the Board be adverse to the member, the member may appeal such decision by filing suit within thirty days of notification of the Board's action, failing which the decision of the Board shall be final. Such suit shall be brought against the State Bar, and shall be filed in a district court in Travis County, Texas. Trial shall be de novo,

but the burden of proof shall be on the member appealing, the burden shall be by a preponderance of the evidence, and the member shall prove the existence of "good cause" as defined herein. The trial court shall proceed to hear and determine the issue without a jury. Either party shall have a right to appeal.

(E) Any suspension of a member under this Article shall be vacated during the administrative review process and while any suit filed is pending.

#### **Section 10. Return to Former Status**

Any member whose license to practice law has been suspended under the terms of this Article who after the date of suspension files an activity report with the MCLE Director showing compliance and who has paid all applicable fees associated with non-compliance and suspension, shall be entitled to have such suspension promptly terminated and be returned to former status. Return to former status shall be retroactive to the inception of suspension, but shall not affect any proceeding for discipline of the member for professional misconduct. The MCLE Director shall promptly notify the Clerk that a member formerly suspended under this Article has now complied with this Article.

#### **Section 11. Exemption of Certain Judges**

Judges subject to Supreme Court Order for Judicial Education dated August 21, 1985, Supreme Court Order for Judicial Education for Retired or Former District Judges dated July 2, 1986, and federal judicial officers, shall be exempt from these requirements.

#### **Section 12. Confidentiality**

A member who reports attendance credits individually to the MCLE Director, without the sponsoring organization's knowledge, automatically consents to release of his or her name to the sponsoring organization for the sole purpose of reconciling attendance records. Other wise, the files, records and proceedings of the Committee, as they relate to the compliance or noncompliance of any member with the requirements of this Article, shall be confidential and shall not be disclosed except upon consent of the member affected or as directed in the course of judicial proceeding by a court of competent jurisdiction.

#### **Section 13. Effective Date**

The effective date of the amendments to this Article shall be January 1, 2005.

### **ARTICLE XIII -Emeritus Attorneys Pro Bono Participation Program**

#### **Section 1. Purpose**

Individuals admitted to the practice of law in Texas have a responsibility to provide competent legal services for all persons, including those unable to pay for such services. As one means of meeting these legal needs, the following Article establishing the emeritus Attorneys Pro Bono Participation Program is adopted.

Section 2. Definitions

(A) "The active practice of law" means that an attorney has been engaged in the practice of law, which includes, but is not limited to, private practice, house counsel, public employment or academic employment.

(B) An "emeritus attorney" is any person, retired from the active practice of law, who is or was admitted to practice law before the highest court of Texas or any other state or territory of the United States of America or the District of Columbia, and

(1) Has been engaged in the active practice of law for a minimum of five out of the ten years immediately preceding the application to participate in the emeritus program; and

(2) Has been a member in good standing of the State Bar of Texas or the entity governing the practice of law of any other state, territory, or the District of Columbia and has not been disciplined for professional misconduct by the bar or courts of any jurisdiction within the past fifteen years; and

(3) If not a retired member of the State Bar of Texas has graduated from a law school accredited by the American Bar Association and has not failed the Texas bar examination three or more times; and

(4) Agrees to abide by the Texas Code of Professional Responsibility and submit to the jurisdiction of the Supreme Court of Texas and State Bar of Texas for disciplinary purposes; and

(5) Neither asks for nor receives compensation of any kind for the legal services to be rendered hereunder; and

(6) Is certified under Section 5 hereof.

(C) An "approved legal assistance organization" for the purposes of this article is a not-for-profit legal assistance organization which is approved by the Supreme Court of Texas as set forth herein. A legal assistance organization seeking approval from the Supreme Court of Texas for the purposes of this article shall file a petition with the clerk of the Supreme Court of Texas certifying that it is a not-for-profit organization and reciting with specificity:

(1) The structure of the organization and whether it accepts funds from its clients;

(2) The major sources of funds used by the organization;

(3) The criteria used to determine potential clients' eligibility for legal services performed by the organization;

(4) The types of legal and nonlegal service performed by the organization;

(5) The names of all members of the State Bar of Texas who are employed by the organization or who regularly perform legal work for the organization; and

(6) The existence and extent of malpractice insurance which will cover the emeritus attorney.

(D) A "supervising attorney" as used herein as an active member of the State Bar of Texas who directs and supervises an emeritus attorney engaged in activities permitted by this Article. The supervising attorney must:

(1) Be employed or be a participating volunteer for an approved legal assistance organization, and

(2) Assume personal professional responsibility for supervising the conduct of the litigation, administrative proceeding or other legal services in which the emeritus attorney participates.

(3) Assist the emeritus attorney in his preparation to the extent that the supervisory attorney considers it necessary.

### **Section 3. Activities**

(A) An emeritus attorney, in association with an approved legal assistance organization and under the supervision of a supervising attorney, may perform the following activities:

(1) The emeritus attorney may appear in any court or before any administrative tribunal or arbitrator in this state on behalf of a client of an approved legal assistance organization if the person on whose behalf the emeritus attorney is appearing has consented in writing to that appearance and a supervising attorney has given written approval for that appearance. The written consent and approval shall be filed in the record of each case and shall be brought to the attention of a judge of the court, the presiding officer of the administrative tribunal or the arbitrator.

(2) The emeritus attorney may prepare pleadings and other documents to be filed in any court or before any administrative tribunal or arbitrator in this state in any matter in which the emeritus attorney is involved. Such pleadings also shall be signed by the supervising attorney.

(3) The emeritus attorney may render legal advice and perform other appropriate legal services but only after prior consultation with, and upon the express consent of, the supervising lawyer.

(4) The emeritus attorney may engage in such other preparatory activities as are necessary for any matter in which he or she is involved.

(B) The presiding judge, hearing officer or arbitrator may, in her or his discretion, determine the extent of the emeritus attorney's participation in any proceeding.

#### **Section 4. Supervision and limitations**

(A) An emeritus attorney must perform all activities authorized by this Article under the direct supervision of a supervising attorney.

(B) Emeritus attorneys permitted to perform services under this Article are not, and shall not represent themselves to be, active members of the State Bar of Texas licensed to practice law in this state.

(C) The prohibition against compensation for the emeritus attorney contained in Section 2(A)(5) shall not prevent the approved legal assistance organization from reimbursing the emeritus attorney for actual expenses incurred while rendering services hereunder nor shall it prevent the approved legal assistance organization from making such charges for its services as it may otherwise properly charge. The approved legal assistance organization shall be entitled to receive all court-awarded attorneys' fees for any representation rendered by the emeritus attorney.

#### **Section 5. Certification**

Permission for an emeritus attorney to perform services under this Article shall become effective upon filing with and approval by the clerk of the Supreme Court of Texas of:

(A) A certification by an approved legal assistance organization stating that the emeritus attorney is currently associated with that legal assistance organization and that an attorney employed by or participating as a volunteer with that organization will assume the duties of the supervising attorney required hereunder,

(B) A certificate from the highest court or agency in the state, territory, or district in which the emeritus attorney previously has been licensed to practice law, certifying that the emeritus attorney has fulfilled the requirements of active bar membership and has a clear disciplinary record as required by Section 2(B) hereof; and

(C) A sworn statement by the emeritus attorney that he or she:

(1) Has read and is familiar with the Texas Code of Professional Responsibility as adopted by the Supreme Court of Texas and will abide by the provisions thereof; and

(2) Submits to the jurisdiction of the Supreme Court of Texas and State Bar of Texas for disciplinary purposes, as defined by Article 10 of the Rules; and

(3) Will neither ask for nor receive compensation of any kind for the legal services authorized hereunder.

#### **Section 6. Withdrawal of Certification**

(A) Permission to perform services under this article shall cease immediately upon the filing with the clerk of the Supreme Court of Texas of a notice either:

(1) By the approved legal assistance organization stating that:

(a) The emeritus attorney has ceased to be associated with the organization, which notice must be filed within five days after such association has ceased; or

(b) That certification of such attorney is withdrawn. An approved legal assistance organization may withdraw certification at any time and it is not necessary that the notice state the cause for such withdrawal. A copy of the notice filed with the clerk of the Supreme Court of Texas shall be mailed by the organization to the emeritus attorney concerned.

(2) By the Supreme Court of Texas, in its discretion, at any time, stating that permission to perform services under this article may be revoked. A copy of such notice shall be mailed by the clerk of the Supreme Court of Texas to the emeritus attorney involved and to the approved legal assistance organization to which he or she had been certified.

(B) If an emeritus attorneys' certification is withdrawn, for any reason, the supervising attorney shall immediately file a notice of such action in the official file of each matter pending before any court or tribunal in which the emeritus attorney was involved.

#### **Section 7. Discipline**

In addition to any appropriate proceedings and discipline which may be imposed by the Supreme Court of Texas or State Bar of Texas, the emeritus attorney shall be subject to the following disciplinary measures:

(A) The presiding judge or hearing officer for any matter in which the emeritus attorney has participated may hold the emeritus attorney in civil contempt for any failure to abide by such tribunal's orders; and

(B) The Supreme Court of Texas or the approved legal assistance organization may, at any time, with or without cause, withdraw certification hereunder.